Public Utilities

FORTNIGHTLY

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August 13, 1942

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

POWERFUL ARGUMENT

"FOR A WHILE, MR. PEABODY, YOU SEEMED TO FROWN ON M
SUGGESTION TO CHANGE TO *AIR* CIRCUIT BREAKERS. *NOW* I FE
THAT I'M GETTING SOMEWHERE WITH YOU!"

Ordinarily, there is no need for s
powerful argument to demonstrate
value of air in electrical protecti
You just consult the record of I-
circuit breakers and switchgear.

I-T-E CIRCUIT BREAKER CO.

AIR CIRCUIT BREAKERS AND SWITCHGEAR
1899 HAMILTON ST., PHILADELPHIA, PA.

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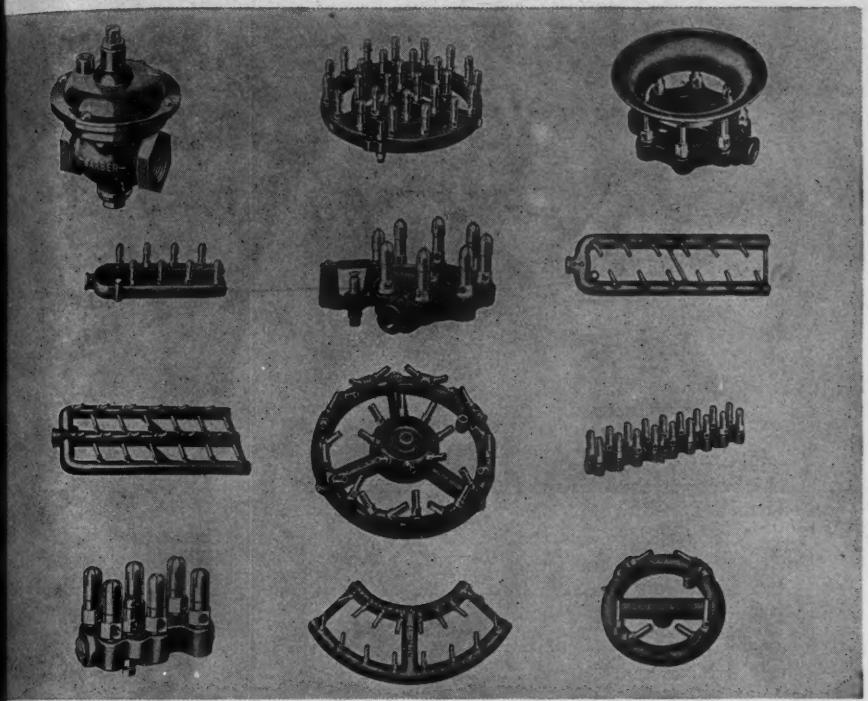

URNERS FOR ALL GAS APPLIANCES

Under the stress of national emergency, engineering resourcefulness in the gas appliance field is now at a greater premium than ever. With the necessity for conservation of every type of gas fuel, as well as materials for the manufacture of gas burning equipment, there has arisen a more imperative demand than ever before for EFFICIENCY.

Barber will design, under laboratory control, the proper type and size burner unit to suit your particular appliance, and for natural, manufactured, Butane, or bottled gas. We are gas burner specialists, and offer you our engineering and plant facilities for the development and manufacture of burner units for your specific purposes. Write for new Catalog 42, illustrating and listing many types of burners for Appliances, Gas Burners for Furnaces and Boilers, Regulators, etc.

BARBER GAS BURNER CO., 3704 Superior Avenue, Cleveland, Ohio

BARBER BURNERS

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Public Utilities Fortnightly

VOLUME XXX *August 13, 1942* NUMBER 4

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

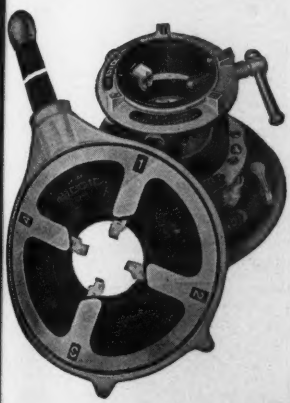
¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS
Publication Office ..... CANDLER BUILDING, BALTIMORE, MD.
Executive, Editorial, and Advertising Offices ..... MUNSEY BUILDING, WASHINGTON, D. C.

PUBLIC UTILITIES FORTNIGHTLY, a magazine dealing with the problems of utility regulation and allied topics, including also decisions of the regulatory commissions and courts, preprinted from *Public Utilities Reports, New Series*, such Reports being supported in part by those conducting public utility service, manufacturers, bankers, accountants, and other users. Entered as second-class matter April 29, 1915, under the Act of March 3, 1879. Entered at the Post Office at Baltimore, Md., Dec. 31, 1936; copyrighted, 1942, by Public Utilities Reports, Inc. Printed in U. S. A.

PRICE, 75 CENTS A COPY ANNUAL SUBSCRIPTION, $15.00

BETTER THREADS *more easily ... quickly ...* with this remarkable work-saver RIDGID No. 65R



Modern designing gives you this fighting tool for the battle against delays, expense and overwork. . . . You set the workholder with a turn of the cam plate that clicks instantly to size—only one screw to tighten. You set 4 self-contained chasers (instead of 16) to size in 10 seconds, to thread either 1", 1¼", 1½" or 2" pipe—and you cut smooth perfect threads with an easy floating action; your little finger can do it. Durable? This 65R is made of rugged steel and malleable, the chaser dies of long wearing high-speed steel. Ask for it at your Supply House.

THE RIDGE TOOL COMPANY • ELYRIA, OHIO

RIDGID

Pipe Wrenches, Cutters, Threaders, Vises

Work-Saver Tools for America's Big Job in 1942

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Pages with the Editors

THE publication in this issue of the second instalment of SELIG ALTSCHUL'S 2-part article on the American air lines reminds us that the Civil Aeronautics Board has had to consider once more the basic idea of the old "recapture of excess earnings" which caused so much controversy in the field of railroad rate regulation. This is found in the recent CAB decision establishing rates of compensation for transportation of mail by Pan American Grace Airways, Inc. The board found that the carrier had earned $1,374,017 in excess of what it regarded as a "reasonable rate" —namely, a rate based on 10 per cent of average investment, including expenses and taxes.

THE board said that the question of dealing with excess earnings was a definite problem which the board had to consider in the light of the experience of the Interstate Commerce Commission with the repeal provisions of the Transportation Act. MR. ALTSCHUL, author of this aviation series, is a consultant to independent financial groups with transportation interests. He is at present financial editor of *Aviation*, regular aviation contributor to *Barron's*, and aviation specialist for the *Chicago Sun*.

FRANK L. BARTON

The commercial South is still suffering under railroad rate discrimination.

(SEE PAGE 221)

JONATHAN BROOKS

The revenue bond makes public debt responsibility virtually anonymous.

(SEE PAGE 216)

"THEY are fixing the price of just about everything now, *except utility rates.*" This paradoxical remark happened to fall on the ear of ye editor in a recent discussion of price control with a native of Nebraska. It would have started a pretty hot argument too, if ye editor had not suddenly remembered that his Nebraska friend was served by a public power district. This district is financed by revenue bonds. The rates of the district's consumers are not subject to any regulatory control of the state or other political body. Under the terms of the bond issue, the rates have to be fixed in such a way as to afford coverage on the debt obligation. The ratepayer, as such, has nothing to say about it.

SUCH a situation would certainly never be tolerated in the case of privately owned utility operations. It serves to emphasize one of the peculiarities of the revenue bond arrangement for financing publicly owned utility projects, discussed in the article beginning page 216.

JONATHAN BROOKS, author of this article on the revenue bond, is the pen name of John Mellett, veteran Indiana newspaperman. Mr. Mellett was born in Elwood, Indiana, is a

GET THE MOST OUT OF DOORS

Kinnear Rolling Doors were ready for the hard, fast, day-and-night service suddenly demanded of them in war plants all over the country. They were *designed and built* to stand up under the most rigorous use—to meet the *toughest* demands—so they'd be sure to give extra long years of carefree service under all normal conditions. Today, their smooth, easy, space saving action, and the strong, protective, inter-locking-slat curtain (originated by Kinnear) are helping to *speed and safeguard* vital production on a thousand and more fronts. But to make sure you're getting all the time-saving convenience built into your Kinnear Rolling Doors, we make the following suggestion on maintenance, the second in a series:

LUBRICATING

Bearings at the end of the barrel shaft (except oilless bearings used on late model doors) and all gearing on mechanically operated doors should be greased and oiled periodically with standard quality lubricants. The oil supply in the gear box of motor operators should be changed at least twice a year (note in Fig. 3 how oil pan is removed for refilling).

2nd in a series, this ad will be followed by others suggesting simple steps that will keep Kinnear Rolling Doors operating at peak efficiency through extra years of service.

Kinnear's nationwide service organization is ready at all times to inspect your doors for possible service needs. If you plan to repaint your Kinnear Doors, it may pay you to first have a complete maintenance checkup. Call your nearest Kinnear representative!

THE KINNEAR MFG. CO., 2060-80 FIELDS AVENUE, COLUMBUS, OHIO

SAVING WAYS IN DOORWAYS

KINNEAR ROLLING DOORS

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graduate of Indiana University, and at one time held an associate professorship at the University of Maine. His home is in Indianapolis. In addition to his considerable experience in professional journalism, Mr. Mellett has also handled publicity and advertising for utility companies in the Middle West.

GREAT Britain has finally come to the rationing of utility service. It took a long time, as time passes during pressure of war emergency. And during that period the vast majority of all other commodities (whether for eating, wearing, housing, or transportation) have fallen under the shadow of the English ration card. But now it appears Great Britain can postpone rationing utility service no longer. The leading article in this issue by J. N. WAITE, manager, southeastern division, Central Electricity Board, shows the basis underlying Britain's plan for rationing utility service. It also deals with other items of interest in connection with the safeguarding of that service.

IRONICALLY enough, it was not the lack of gas or electric generating capacity or distribution facilities which finally brought Great Britain to the point of rationing gas and electricity. It was simply a matter of fuel conservation—not enough coal to take care of all demands. This is a thought well worth keeping in mind when we hear recurrent prophecies of critical power shortages in the United States.

DOUBTLESS there will be power shortages at some time and in some places in the months ahead. (There are already some "tight" spots.) Whether this will ever come to the point of affecting the domestic consumer is still quite debatable. But it seems we have been hearing dire forecasts of a power shortage since 1939. And here it is well on toward the end of 1942. There has not been a householder in the United States who has yet been told that he cannot press the electric switch in his home or turn on the gas without complete confidence that adequate service will result therefrom.

WITH good luck and public coöperation, it is not only entirely possible, but quite probable, that most sections of the United States can go through the entire war period without such deficiencies of service being brought home to the American people. Compare this (without any odious implications, of course) with what is happening in so many other commodity lines and service lines. Then determine for yourself whether the terrific war demand has caught the utilities unprepared.

SELIG ALTSCHUL

The war is acting as a veritable incubator for commercial air carrier development.

(SEE PAGE 208)

FRANK L. BARTON, whose article on railroad rate making commences on page 221, was until recently transportation economist and chief of the economics section of the Tennessee Valley Authority, stationed at Knoxville, Tennessee. He is now employed as senior economist, division of statistical standards of the U. S. Bureau of the Budget. Texas born, MR. BARTON graduated from the University of Texas in 1932 (Master's degree, 1933). He taught economics at the Alabama Polytechnic Institute and Louisiana State University. He was also employed for a short time by the Santa Fe Railway at Amarillo, Texas.

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

THE Georgia commission has amended regulations requiring an electric company to provide extensions, as well as transformer stations, at its own expense for service to new industries, in order to provide for customer contributions towards the cost of extensions to serve temporary war industries. This will protect other customers from being called upon in the future to provide a return on a greatly increased capital investment not made for their direct benefit but for the good of the nation as a whole, which cost should be absorbed in the over-all cost of the war. (See page 69.)

A DISCUSSION of the lack of commission jurisdiction over matters not affecting directly the service furnished and the rates charged, such as rates of pay for labor employed by utility companies, labor policies, sale of electrical appliances, and rental of appliances, is found in an opinion of the New York Commission. (See page 89.)

THE next number of this magazine will be out August 27th.

The Editors

IT'S NO SECRET THAT REMINGTONS HAVE GONE TO WAR  **REMINGTONS ARE NEEDED WHEREVER PLANES**  **FLY; WHEREVER MEN**  **MARCH AND WHEREVER TANKS**  **ROLL. SO IF YOU CAN'T BUY NEW REMINGTONS UNTIL VICTORY IS WON, JUST REMEMBER THAT THEY, LIKE SOLDIERS, PILOTS AND SAILORS, HAVE A JOB TO DO AND WILL RETURN ONLY WHEN IT'S DONE.**

TYPEWRITER DIVISION • REMINGTON RAND INC. • BRANCHES EVERYWHERE

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In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

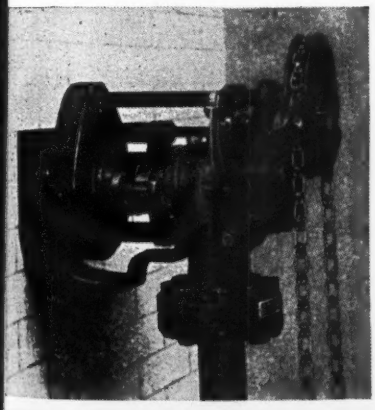
In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 65-128, from 44 PUR(NS)

Vulcan provides clean heat transfer surfaces to the Combustion four-drum, bent-tube, 400,000 lb. per hr., pulverized coal-fired boiler which serves this new 40,000 kilowatt, 900 lb. per sq. in. Southern plant.

VULCAN SOOT BLOWERS



Chickasaw becomes another in the long list of plants depending on VULCAN Soot Blowers to assure highest heat transfer, real steam economy and freedom from frequent servicing.

The advanced design, HyVuloy and Vulite intimate contact bearings, HyVuloy elements and VULCAN'S Model LG-1 are guarantees of efficient, trouble-free operation in ANY plant.

Remember that whatever the characteristics of your boiler and setting, fuel, or load, Vulcan engineers will be glad to solve any soot blower installation and operating problem involved.

VULCAN SOOT BLOWER CORP., DUBOIS, PA.

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Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

EDITORIAL STATEMENT
Industrial News Review.

"The development of the power industry is the result of American genius at its best."

JOSEPH B. EASTMAN
Director, Office of Defense Transportation.

"Contrary to a rather common impression, I am not a second McAdoo nor yet a transportation czar."

ROY LECRAW
Mayor, Atlanta, Georgia.

"If these [Federal housing] projects are not communistic, then I do not know the meaning of the word."

HENRY MCLEMORE
Newspaper columnist.

"If Mr. Fly would be kind enough to take a suggestion from us on how to reduce long-distance calls, here it is: Make it compulsory that all long-distance calls be collect."

D. D. EWING
Head, Purdue University School of Electrical Engineering.

"Give our production engineers a chance, cut the red tape, pork barrel strings, and the other fetters that hamper production, and 'too little and too late' will become a forgotten phrase."

L. A. CHAMBLISS
President, New Jersey Bankers Association.

"There are those who would use taxation for other purposes than to raise revenue. All you need to have Fascism, Nazism, Socialism, or Communism in America, is to so tax corporations that they can pay no dividends."

WILLIAM P. WITHEROW
President, National Association of Manufacturers.

"Inflation control must both control prices and control as well the pressure of increased purchasing power which forces prices up. We must be careful not to try the expedient of sitting on a safety valve to keep the boiler from exploding."

WILLIAM H. DAVIS
Chairman, National War Labor Board.

"If anybody talks about freezing wages—well, there ain't no such animal. We talk glibly about the wage levels in America. Wages in America are just about as level as the Himalaya mountains. There is not any wage level to be frozen."

ALFRED M. LANDON
Former governor of Kansas.

"We know there is waste and extravagance in Washington. We know there is bungling leadership. We know that by certain members of the administration Hitler is forgotten as the enemy, and to them the wicked capitalistic system still remains the main enemy."

HELPING BURROUGHS USERS MEET TODAY'S PROBLEMS
WITH THEIR PRESENT EQUIPMENT

8 SUGGESTIONS

you can pass along to help get more work per machine

1. Wherever possible, obtain statistics and figures for reports as a by-product of regular posting.
2. Post related records in combination.
3. Change routines or methods to avoid any unnecessary rehandling of figures or records.
4. Study all office forms to find out whether any might be simplified or eliminated.
5. Relocate machines, or rearrange the flow of work to the machines, to speed production.
6. Make sure that operators are taking full advantage of short-cut operating methods and time-saving machine features.
7. Relieve skilled machine operators of non-posting work, such as pre-listing, stuffing, checking for errors, heading new accounts.
8. Keep machines always in the best possible operating condition.

These are but a few of many suggestions that may help you get the most out of your present Burroughs equipment. For any technical machine assistance, call your local Burroughs office, or write—

BURROUGHS ADDING MACHINE COMPANY, DETROIT

Burroughs

★ FOR VICTORY—BUY UNITED STATES WAR BONDS AND STAMPS ★

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ELSON MARTIN
General solicitor, Chicago, Burlington & Quincy Railroad Company.

". . . if the efficient railroad managements of this country, with the coöperation and the powers of Director Eastman, can't keep them rolling this fall, no government operation could do so."

Excerpt from New England letter, The First National Bank of Boston.

"Unprecedented Federal expenditures call for unprecedented taxation. The more we can finance on a 'pay-as-you-go basis' the better able we shall be to curb inflation and to safeguard national credit."

EDITORIAL STATEMENT
The Wall Street Journal.

"Limitation of profits to any percentage would serve to penalize the efficient. There would be little incentive for a management to cut costs if they know that they will be allowed so much and no more."

THURMAN ARNOLD
Assistant Attorney General.

"If we emerge from the war with a diffused ownership and increased productive capacity, we will have solved the monopoly problem which has been a sore spot in our economy since 1920. Therefore, it will continue to be the long-run policy of antitrust enforcement to prevent such post-war domination of essential industries."

RICHARD H. STOUT
President, Morris Plan Bankers Association.

"Studies of buying and spending habits of today are as outmoded as the snuff box. While the people as a whole will have to tighten their belts, the two classes that promise to come closer to living off the fat of the land will be the farmers and wage earners. The middle classes will have to curtail expenditures, borrowings, and thrift deposits."

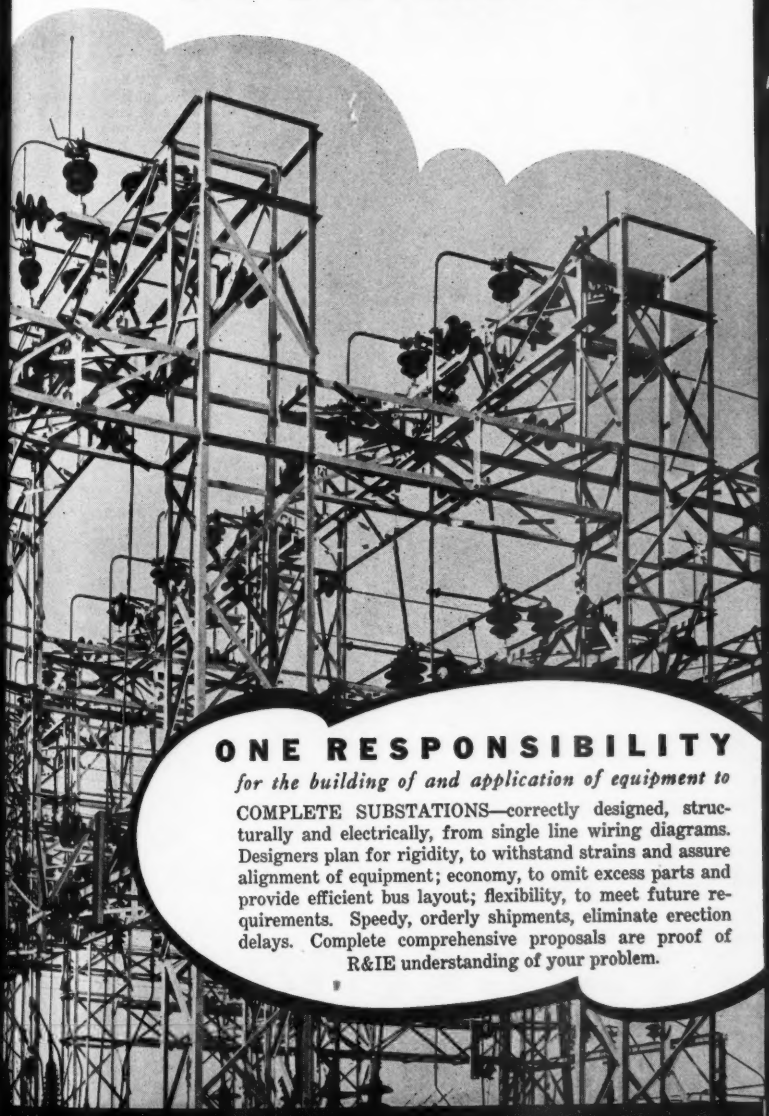
EDITORIAL STATEMENT
The Hartford (Conn.) Courant.

"It is obvious that radio requires technical regulation. The channels of the air must be allocated as equitably as possible among the various stations in order to avoid the interference of one with another. Each station must operate on the frequency assigned to it, else there would be nothing but a babel of tongues and endless confusion. Once the Federal Communications Commission has attended to that, its job is largely done. From there on radio should be as free as the press with respect to its operations."

EDITORIAL STATEMENT
Gas Age.

"In the past, there has been some so-called fighting for that [cooking, water heating, and refrigeration] load between the two [gas and electric] utilities, but, in retrospect, that previous fighting will seem to have been exceedingly tame. . . . In contrast, the cat-and-dog fight which is to come in the post-war period for that domestic load will be more like the fight between the wildest of wild cats and the maddest of mad dogs. Wise is the utility which commences at once to build up ammunition for that merchandising battle to come!'

R&IE *the Switching Equipment* SPECIALIST



ONE RESPONSIBILITY

for the building of and application of equipment to

COMPLETE SUBSTATIONS—correctly designed, structurally and electrically, from single line wiring diagrams. Designers plan for rigidity, to withstand strains and assure alignment of equipment; economy, to omit excess parts and provide efficient bus layout; flexibility, to meet future requirements. Speedy, orderly shipments, eliminate erection delays. Complete comprehensive proposals are proof of R&IE understanding of your problem.

- PRODUCTION
- COMPLETE SUBSTATION
- OPERATING MECHANISMS
- AIR BREAK SWITCH
- BUS CLAMPS
- CONNECTORS
- DISCONNECTING SWITCHES
- CUTOUTS
- THERMO-RUPTER
- METAL HOUSED SEGREGATED BU
- AUTOMATIC THROW-OVER EQUIPMENT
- METAL CUBICLE
- INTERLOCKS
- TESTING DEVICE

ILWAY AND INDUSTRIAL ENGINEERING CO.

ENSBURG, PA. . . . . IN CANADA, Eastern Power Devices, Ltd., Toronto

CRESCENT

Manufactures ELECTRICAL WIRES & CABLES to Provide Power for Victory

CRESCENT is in "all-out" production NOW to help win this war!

CRESCENT INSULATED WIRE & CABLE CO.

CRESCENT
WIRE and CABLE
Factory: TRENTON, N. J.—*Stocks in Principal Cities*

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No. 27 of a Series

MODERN STEAM GENERATING UNITS

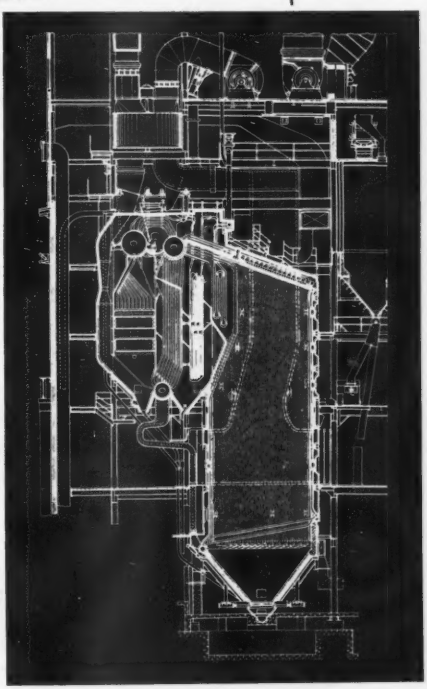
THE DETROIT EDISON COMPANY

MARYSVILLE POWER HOUSE—MARYSVILLE, MICH.

Capacity—440,000 lb. per hr.

Design Pressure—975 psi

Total Steam Temperature—910 F



The sectional elevation at the right shows a C-E Unit, one of four, now under construction for the Marysville Power House of The Detroit Edison Company.

C-E equipment includes Type VE Boilers, Water-Cooled Furnaces, Bowl Mills, Tangential Burners and Elesco Superheaters and Economizers. Air heaters are the Ljungstrom regenerative type.

These units not only comprise an extension to existing plant capacity but constitute the initial step in the projected general rehabilitation of the Marysville Station.

• • •

Many of the most notable steam generating units of the present day have been designed by Combustion Engineering. They include eight of the ten units in the world which are capable of producing 1,000,000 lb. of steam per hr.; also the boilers most recently installed in the world's largest utility, industrial and central heating plants.

C-E Products include all types of

BOILERS • FURNACES • PULVERIZED FUEL EQUIPMENT • STOKERS

SUPERHEATERS • ECONOMIZERS • AIR HEATERS

COMBUSTION ENGINEERING

200 MADISON AVENUE, NEW YORK, N. Y.

A-638

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MISSIONARIES OF "MEASURED HEAT"

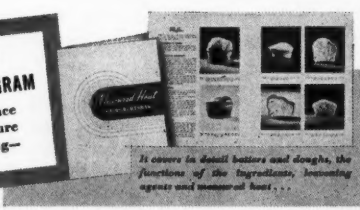
Many valuable facts are being offered these days on the vitamin content of foods. But have you noticed how little the public is told about how to cook these foods so that these vitamins may be preserved?

Robertshaw has seized this golden opportunity to perform a much-needed public service—and also promote a market for better cooking equipment when peace is here again.

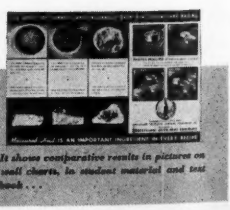
Through its Educational Program, Robertshaw is teaching the gospel of "Measured Heat" and the part heat plays in proper cooking. The Robertshaw "Measured Heat" Program is used by Home Economics teachers in grade and high schools. It is also widely used by County Home Demonstration Agents, Home Economics supervisors, and at Universities where home economics teachers study. These are the people in whose hands the future of cooking lies.

ROBERTSHAW THERMOSTAT COMPANY
YOUNGWOOD, PA.

THE ROBERTSHAW MEASURED HEAT PROGRAM
explains the importance of optimum temperature in baking and roasting—



It covers in detail batters and doughs, the functions of the ingredients, leavening agents and measured heat . . .



It shows comparative results in pictures on wall charts, in student material and text book . . .

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MERCOID CONTROLS

MEET YOUR CRITICAL WAR TIME REQUIREMENTS

FOR INDUSTRIAL OIL BURNERS * COAL

STOKERS * UNIT HEATERS * GAS BURNERS * REFRIGERATION,

AIR CONDITIONING AND VARIOUS INDUSTRIAL APPLICATIONS

The design, construction and operation of Mercoid Controls fit them for the exacting requirements of wartime emergencies, when service attention must be reduced to a minimum.

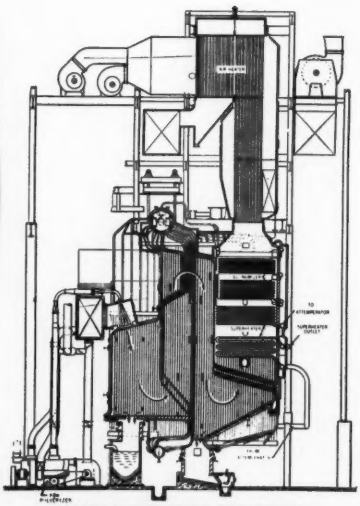
Throughout industry, in all its branches, this qualification of Mercoid Controls is accepted by plant engineers. Their universal use makes them a familiar sight with few, if any, exceptions in every plant where control equipment is essential. Make a note to examine one and investigate its performance. You will find a startling confirmation of Mercoid's claims for its instruments.

What's the reason? An outstanding one is that every Mercoid Control is equipped with one or more Mercoid mercury switches for making and breaking the electrical circuit. Contact troubles due to dust, moisture, corrosion, and arcing are minimized. Engineers appreciate also the time saving factor in checking Mercoid Control equipped circuits. They can see the contacts function —don't have to waste valuable time in testing.

If your problems involve the control of temperatures, pressures, liquid levels, or certain mechanical operations, consult Mercoid. An able staff of engineers is at your service. Priorities are necessary, but an adequate stock for essential uses has been provided for. If your source library is without a catalog write for one today.

THE MERCOID CORPORATION
4213 Belmont Avenue • Chicago, Illinois

Not the number -but the Job each



OPEN-PASS BOILER

B&W is naturally proud of the statistics covering the Radiant, Open-Pass, and Integral-Furnace Boilers sold in 1941 for central-station service, which, for example, show that 71 per cent were purchased by utility companies already having boilers of these designs in service or on order—definitely indicating the acceptance of these designs. Twelve of the boilers will have individual steam-generating capacities of 500,000 lb. per hr. and over, thirty-five are designed for pressures of 900 psi or higher, and thirty-two for total steam temperatures of 850 F. or above.

But greater pride is taken in the fact that each application is a pointed example of the adaptability of B&W designs to exacting central-station requirements, through the use of existing designs, the adaptation of an existing design, or the creation of a new design to meet specific engineering problems. And into each is built the broad experience of the B&W Company—experience impossible to write into specifications or to show on blueprints, but is inherent in all B&W Boilers.

THE BABCOCK & WILCOX COMPANY
85 LIBERTY STREET, NEW YORK

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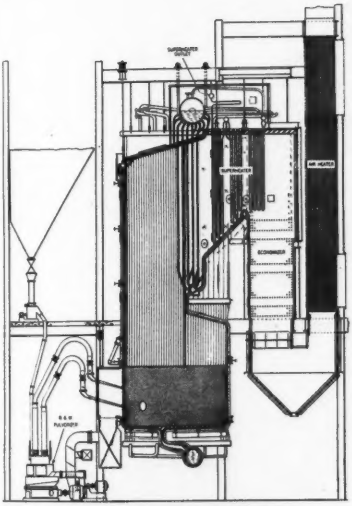
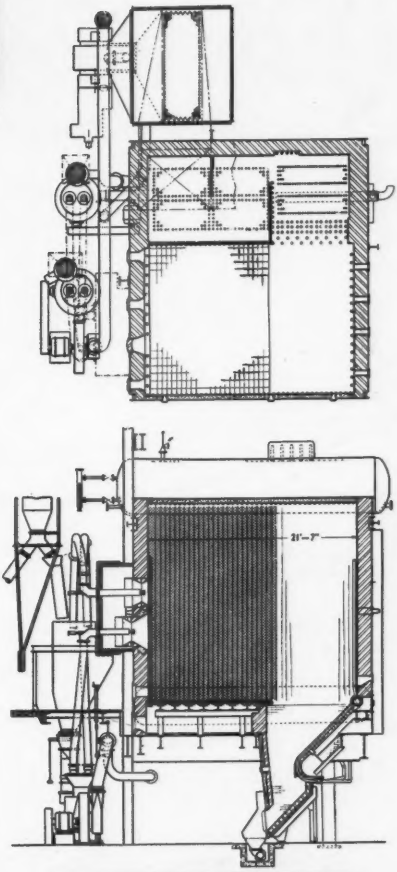
and size will do



RADIANT BOILER



INTEGRAL-FURNACE BOILER

The Navy "E" Award to the Barberton Works for production achievement is "an honor not lightly bestowed and one to be cherished."

BABCOCK & WILCOX

G-217T

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CLEVELANDS Keep Your Job Moving Because . . .

In Clevelands, correct design joins hands with "Tops" in Quality to produce machines that are definitely leaders in Performance.

Power and traction to take them anywhere are coupled with the ultimate in strong, long wearing material. Thus, not only mere repair costs but the even more serious service-interruptions are brought to a minimum. These are user-substantiated facts that help tell the story of why Clevelands' continuity of performance pays you big dividends in resultant cost-savings.

• • •

THE CLEVELAND TRENCHER COMPANY
20100 ST. CLAIR AVE. "Pioneer of the Small Trencher" CLEVELAND, OHIO
"CLEVELANDS" Save More . . . Because they Do More

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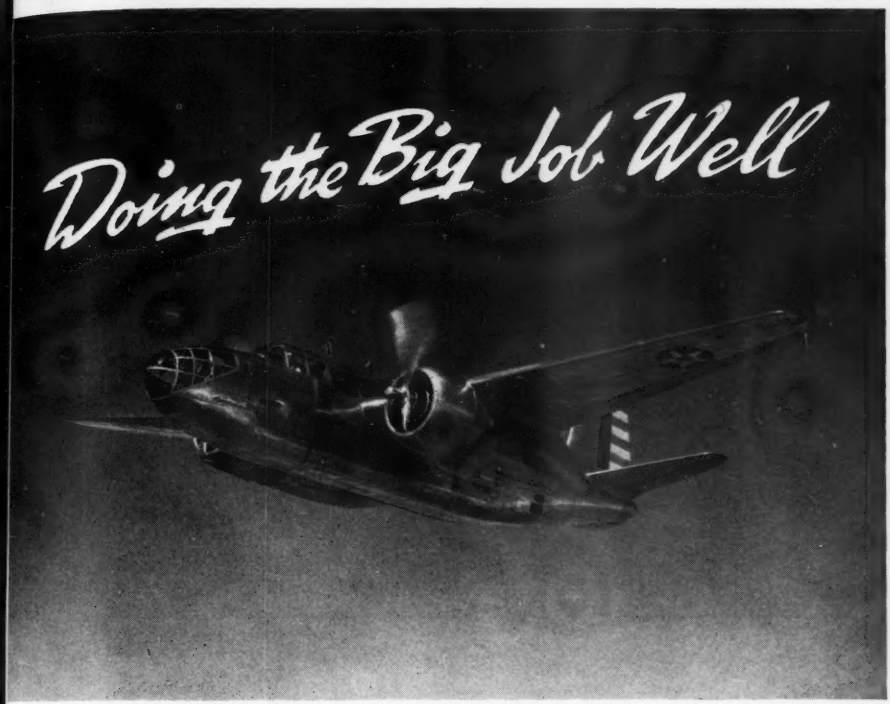

The output of factories, such as ours, will be the determining factor in the prosecution of the war by the democracies. On industry's nation-wide battle-front, gas has proved to be one of our most effective and efficient weapons. The shift from normal peacetime requirements to unprecedented heavy wartime demands finds the entire Gas Industry, supplier and manufacturer alike, willing to shoulder the responsibilities thrust upon it.

DOING OUR BIG JOB WELL

To utilize gas to the best advantage and at the same time conserve this important fuel, it must be accurately controlled and measured. As one part of our contribution towards the production of military equipment, we are furnishing EMCO Meters and Regulators and Nordstrom Valves to help the Gas Industry meet the expanding needs of wartime industry. At the same time a large portion of our manufacturing facilities are busily engaged in producing essential materials for our armed forces.

PITTSBURGH EQUITABLE METER COMPANY

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NATIONAL METER DIVISION, Brooklyn, N. Y.

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EMCO METERS AND REGULATORS • NORDSTROM LUBRICATED PLUG VALVES

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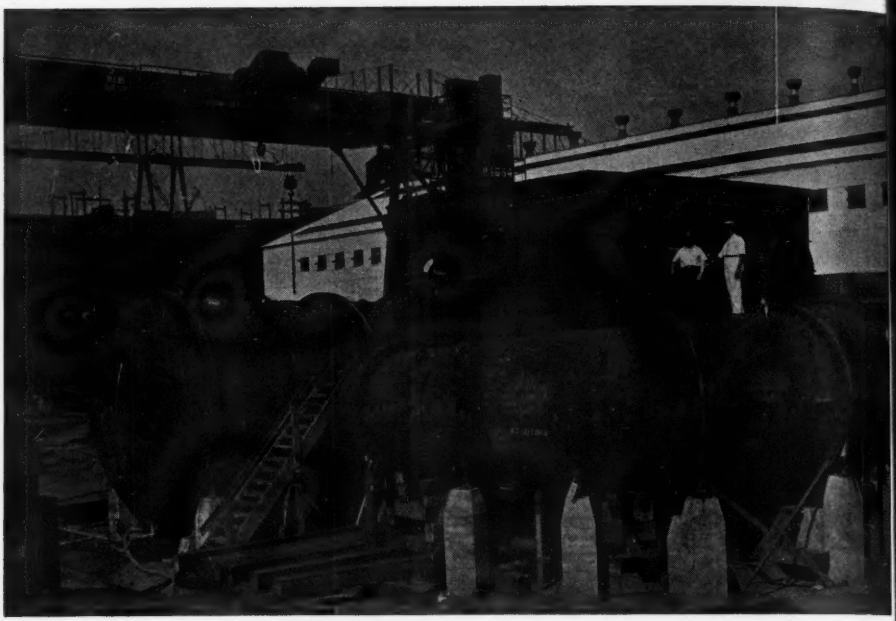

150,000 HP Francis Turbine for Grand Coulee Project

(SHOP HYDROSTATIC TEST—230 LB. PER SQ. IN.)

HYDRAULIC TURBINES
FRANCIS AND HIGH SPEED
RUNNERS
BUTTERFLY VALVES
POWER OPERATED RACK RAKES
GATES AND GATE HOISTS
ELECTRICALLY WELDED RACKS

Newport News Shipbuilding and Dry Dock Company
(Hydraulic Turbine Division)
Newport News, Virginia

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POWER—

The Experience BEHIND THE ENGINE Assures Performance

THERE IS more than 30 years of engine building experience back of International Power Units . . . experience that assures you of dependable engine performance.

The International Power Unit line includes engines in sizes up to 110 h.p. for Diesel, natural gas, gasoline, and distillate operation.

Ask the International Industrial Power dealer or branch near you how International Power Units can do a dependable job for you. And when you need service, count on the service facilities of International Harvester's nation-wide branch and dealer organization. Meanwhile, if you are using International Power Units now, take care of them and make them do . . . for VICTORY.

INTERNATIONAL HARVESTER COMPANY
180 North Michigan Avenue Chicago, Illinois

INTERNATIONAL HARVESTER

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Behind Utility Managements in These Critical Times

★

I B M MACHINES ARE ON THE JOB

Action is the utilities' answer to the Nation's call . . . and very much on the job, performing big accounting and control jobs for utility managements are fast, accurate, automatic I B M machines. They compute, audit and print service bills, protecting both utility and public against error. They account for revenue, and control accounts receivable. They vanquish the drudgery once associated with payroll, labor, material, transportation, and other detailed branches of general accounting. They automatically assimilate and classify operational data into forms that utility managements can work with and use for external legal relations — into financial reports, operating reports, budget comparisons, and historical ledgers . . . These and scores of other accounting and administration tasks are being performed by I B M machines for utility managements in today's critical times.

INTERNATIONAL BUSINESS MACHINES CORPORATION

Offices in *Principal Cities*

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CONSERVE IT-

to help speed VICTORY

EVERY storage battery is a war weapon containing metals vital to our fighting men. If we can't join them in tank, plane or warship, we can, we *must,* help by conserving our batteries. We urge every battery user to observe more closely than ever before the following simple rules of battery conservation:

1. Add approved water at regular intervals. Water in most localities is safe to use in an Exide Battery. Ask us if yours is safe.
2. Keep the top of battery clean and dry at all times.
3. Keep battery fully charged, but not over-charged. Check your D.C. control-bus voltmeter to see that it is in calibration.
4. Keep records of water additions; records of the full charge gravity and voltage provide a basis for comparisons to detect irregularities.

If you wish more detailed information, or have a special battery problem, don't hesitate to write. We want to help you get the long life that is built into every Exide Battery. Ask for booklet Form 3225.

Exide
BATTERIES

THE ELECTRIC STORAGE BATTERY CO.

The World's Largest Manufacturers of Storage Batteries for Every Purpose

PHILADELPHIA

Exide Batteries of Canada, Limited, Toronto

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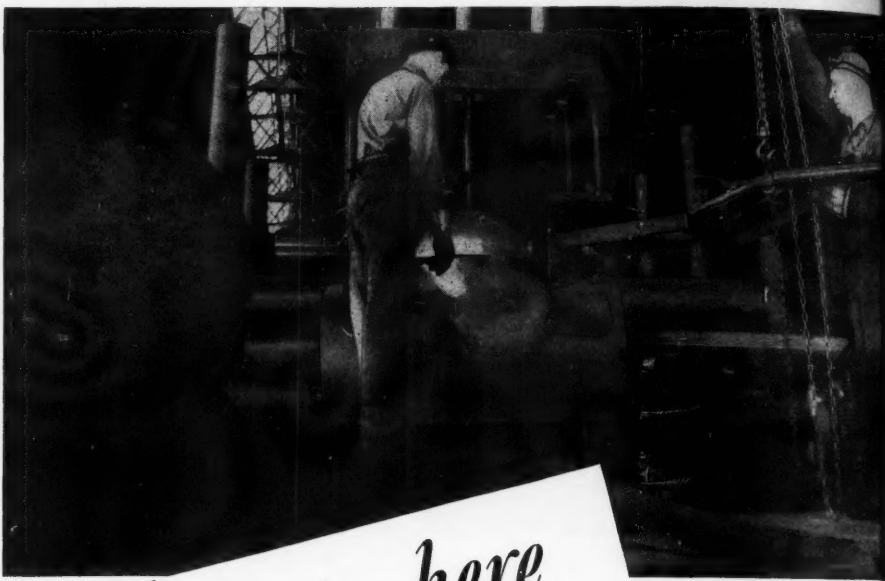

Minutes here save hours later!

Every hour saved in the erection of your welded piping means just that much more time for essential wartime production. And Grinnell Welded Fittings are precision-engineered to save time on every welded joint!

The illustration shows one typical operation in Grinnell's precision production. In this exclusive process, outlets of all tees and crosses are accurately extruded . . full wall thickness is maintained . . field welding is limited to plain circumferential butt welds, the quickest-to-make and strongest welded joints.

Grinnell Welding Fittings arrive on the job exactly *metal-matched* and identical in end-thickness with the pipe or tubing you select. They are accurately dimensioned to specifications, with ends correctly scarfed. You get quicker, better welding . . joints that pass inspection easily and remain trouble-free.

Save time by specifying Grinnell Welding Fittings. Write for complete Data Book. Grinnell Company, Inc., Executive Offices, Providence, Rhode Island. Branch offices in principal cities of United States and Canada.

WELDING FITTINGS BY **GRINNELL**

WHENEVER **PIPING** IS INVOLVED

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How A modern METER CONSERVATION program will

INCREASE WATER REVENUE

REDUCE OPERATING COSTS

PROPER meter conservation, instead of *increasing* the cost of water to the consumer, has proved a means of *minimizing* such costs by reducing water works operating expenses . . . to the extent that in some instances water rates in the community have been substantially lowered, yet the water company has had funds to set aside for improvements and extensions of the system.

Water companies, when starting a regular meter conservation program of testing and repairing, will find that they have been losing much revenue due to under-registration of meters. Customers will no doubt complain of high water bills when meters have been restored to accuracy, but bills will decrease when formerly unsuspected leaks have been stopped and carelessness in the use of water has been eliminated. Records kept will allow a much closer control over leakage losses which may occur from time to time.

On the whole, the Water Departments will be paid for a much greater proportion of their pumpage. At the same time, pumpage will be materially reduced, resulting in a real saving in fuel and chemicals. Multiply such savings by thousands of small communities — savings in *materials* and in their *production-hours* released for WAR work — and you begin to visualize the Water Departments' contribution towards helping win the war.

Your experienced Trident representative will be glad to cooperate with you in your meter conservation program . . . and, in addition, you are invited to write us for our new Booklet #597. It is a thorough and informative study of this important subject, based on actual practice.

★Recommendations★ for a Meter Conservation Program

1. Remove all meters after a certain period of time or after a certain total consumption, or combination of both.
2. Test them when brought into the shop for repairs, keeping a record of these tests. Test at rate of flow in gallons per minute.
3. Repair them carefully, especially the chambers and gear trains, keeping a record of repair costs, both parts and labor.
4. Test them after repairs, requiring a high percentage of registration on a 0.25-g.p.m. flow.

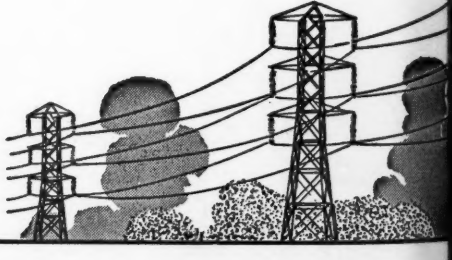
TRIDENT METERS
LET'S MAKE THE MOST OF WHAT WE'VE GOT
INTERCHANGEABILITY

NEPTUNE METER COMPANY • 50 West 50th Street • NEW YORK CITY

Branch Offices in CHICAGO, SAN FRANCISCO, LOS ANGELES, PORTLAND, ORE., DENVER, DALLAS, KANSAS CITY, LOUISVILLE, ATLANTA, BOSTON.

Neptune Meters, Ltd., Long Branch, Ontario, Canada.

Transmission line construction costs can be materially reduced and completion expedited by using Hoosier Crews



HOOSIER ENGINEERING COMPANY

CHICAGO 46 SO. 5TH ST., COLUMBUS, OHIO NEW YORK

ERECTORS OF TRANSMISSION LINES

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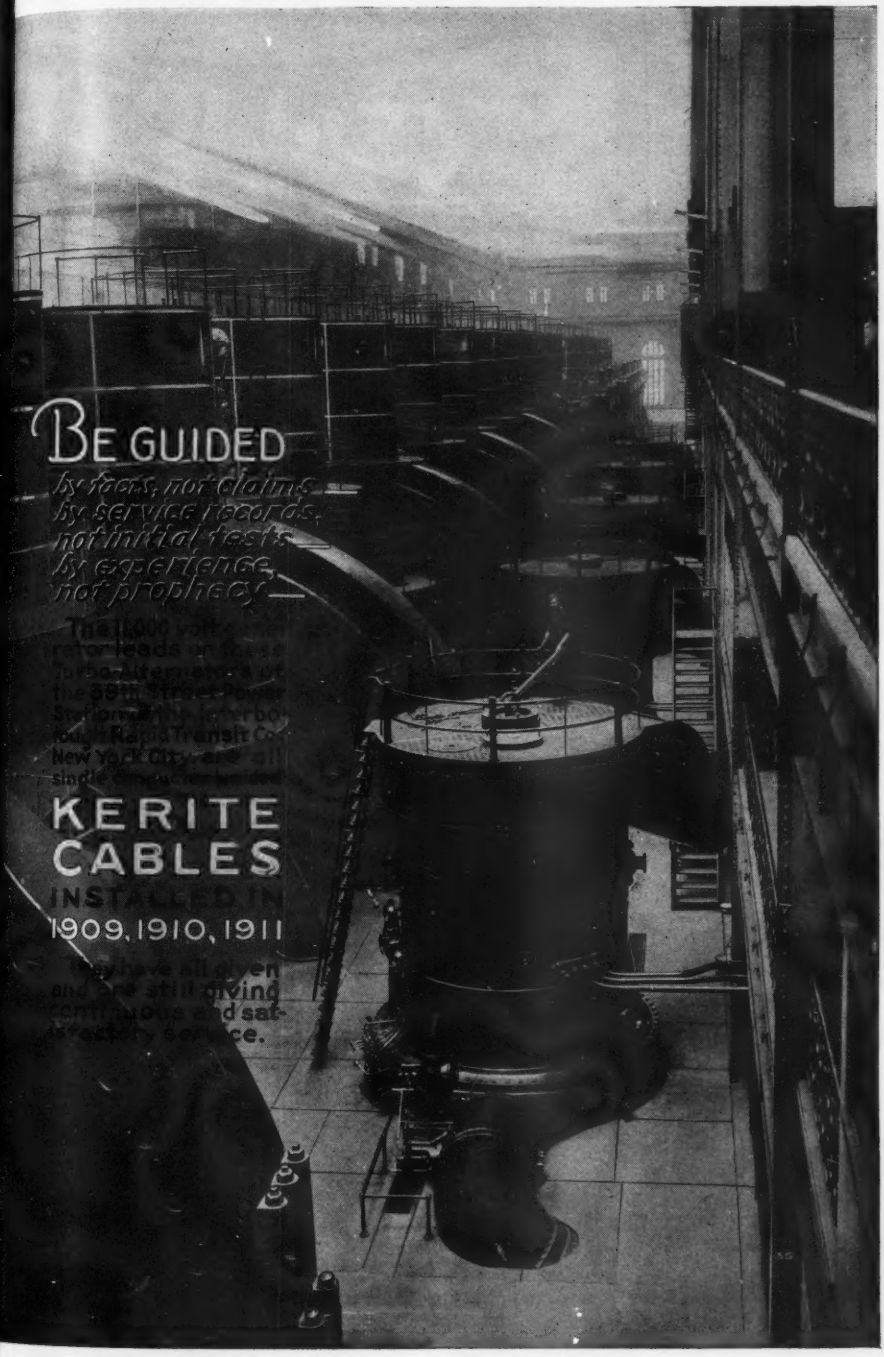

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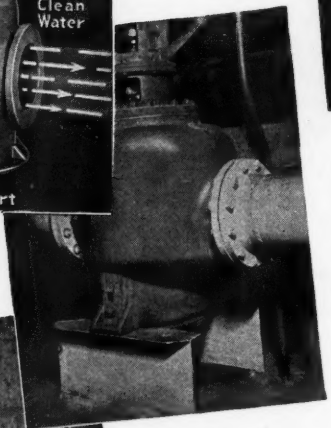
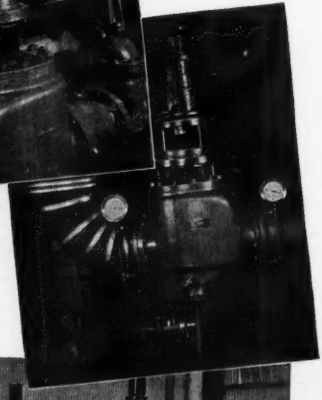
Continuous water straining *and no cleaning problem!*

◀ How the Elliott self-cleaning strainer is installed. Water goes through, foreign matter ejected downward.



Elliott 14" self-cleaning strainer, one of five in a Canadian hydro plant. They protect fire extinguishing apparatus, transformer cooling and generator cooling coils.

▲ Above. One of three Elliott 16" self-cleaning strainers in bearing cooling water service in a central station.



Right. In a steel mill, ▶ a 12" Elliott self-cleaning strainer serves in mill service water line.

Three Elliott 14" self-cleaning strainers in a steel mill serve in roll cooling water system. ▼

ELLIOTT *Self-cleaning* STRAINERS

To remove abrasive and other foreign ma rial from water, preventing damage to pur and other equipment, becomes in effect a tional duty. To do this with little or no dema upon man-power is almost equally essenti

The Elliott self-cleaning strainer meets b of these requirements. It will continuously move a relatively large amount of fine without supervision or attention. A gear motor slowly rotates a sealing box wh covers in turn each section of the strain element, allowing back-flowing water to flu out the dirt. Then the cleared straining se tion again takes up its function. Relative simple, and thoroughly successful, as in t various installations illustrated here.

Where manual cleaning is permissib Elliott Twin Strainers will provide continuo service. Equipped with twin cylinders, one which handles the load while the other being opened and its strainer basket dumpe Thousands of these non-stop units are,in u in central stations and industrial plants.

If straining is a question with you, l us answer it. Bulletin on request.

ELLIOTT COMPANY

Accessories Dept., JEANNETTE, PA

DISTRICT OFFICES IN PRINCIPAL CITI

A-270

Utilities Almanack

Due to war-time travel restrictions, conventions listed are subject to cancellation.

AUGUST

13	Th	¶ *Pennsylvania Water Works Operators' Association will hold meeting, Harrisburg, Pa., Aug. 27, 1942.*
14	F	¶ *National Association of Securities Commissioners will hold meeting, St. Paul, Minn., Sept. 2–4, 1942.*
15	Sa	¶ *State Municipal League of Utah will hold meeting, Cedar City, Utah, Sept. 3–5, 1942.*
16	S	¶ *Governmental Research Association will hold session, Princeton, N. J., Sept. 7–9, 1942.*
17	M	¶ *American Institute of Electrical Engineers will hold Pacific coast convention, Vancouver, B. C., Sept. 9–11, 1942.*
18	Tu	¶ *American Transit Association will hold business meeting, Chicago, Ill., Sept. 9–11, 1942.*
19	W	¶ *American Water Works Association, Michigan Section, will hold meeting, Traverse City, Mich., Sept. 9–11, 1942.*
20	Th	¶ *Pennsylvania Electric Association will hold annual meeting, Philadelphia, Pa., Sept. 11, 1942.*
21	F	¶ *League of North Dakota Municipalities will hold meeting, Dickinson, N. D., Sept. 14–16, 1942.*
22	Sa	¶ *Kentucky Independent Telephone Association will hold meeting, Ashland, Ky., Sept. 15, 16, 1942.*
23	S	¶ *Municipal Electric Utilities Association of New York State will convene, Lake Placid, N. Y., Sept. 16–18, 1942.*
24	M	¶ *American Bar Association opens meeting, Detroit, Mich., 1942.*
25	Tu	¶ *American Water Works Association, Rocky Mountain Section, will convene, Cheyenne, Wyo., Sept. 17, 18, 1942.*
26	W	¶ *Illuminating Engineering Society will convene for meeting, St. Louis, Mo., Sept. 21, 22, 1942.*

Courtesy of the A.C.A. Gallery *From Elsie Hafner, N. Y.*

"Freight Train"

By A. Tromka

Public Utilities
FORTNIGHTLY

VOL. XXX; No. 4 AUGUST 13, 1942

Britain Guards and Rations Her Utility Services

A Letter from England

A new Ministry of Fuel, Light, and Power, headed by Major William Gwilym Lloyd George (son of World War I Lloyd George) has been created by the British government to control the coal industry and to administer the rationing of other fuels. According to a recent announcement, the rationing was scheduled to begin September 1st. The letter below, written by the division manager of the CEB to Davis M. DeBard, vice president of Stone & Webster Service Corporation, gives us an idea of the technique adopted for such wartime control—also other steps taken to guard and maintain essential electric service under the stress of war conditions.

By J. N. WAITE
MANAGER, S. E. DIVISION, CENTRAL ELECTRICITY BOARD

THE English government has gotten out a proposed rationing scheme for fuel. It is proposed to allow each man, woman, and child for the next twelve months 840 pounds of coal or its equivalent in electricity, or gas, or oil. The proposed ratios are 112 pounds of coal equals 100 kilowatt hours, or 5 therms of gas, or 2 gallons of oil. The proposed saving is 10,000,000 tons, or one-eighth of the national yearly use.

The need for this comes from the fact that due to the big increases in the power load to meet war production, sufficient coal is not being obtained to meet all demands for the coming winter. This arises from the fact that a large number of miners have been taken into the fighting services and also into

war factories, and it will be some considerable job to get them back again.

There appears, however, to be a hardening of public opinion that rationing of electricity and gas is both unnecessary and impracticable and that the true solution is the liberation of miners and sending them back to coal getting.

We got through the last winter's load with a bit of a squeeze as it was very much higher than any previous war year, and particularly output in units is still growing and we shall have a considerably higher load to meet next winter. We are now making sure that all the new plants which can be completed will be completed and that all existing plants will be available for load.

The maintenance programs on a national scale have been drawn up for all power station plant and all main transmission throughout the country. As you are aware, the Board is operated by splitting the country into certain main districts. In each of these districts, meetings have been arranged at which all the power station superintendents are present and all details of overhaul and maintenance, and any other matters germane to getting the maximum availability of plant, are thoroughly thrashed out and programs agreed to. Further meetings will take place before the winter, to review the situation so that we shall have a complete picture at all times of the national position.

THERE are a number of power stations which are not operated to the instructions of the Board, but where a useful purpose can be served, agreements have been made with the owners for the Board to direct the operation of these stations, in the national interest, so that their capacity can be usefully employed. The basis of these agreements is that the owner of the station shall not be put in any worse position financially by allowing the Board to have the use of the station, but no charge is made for the use of the station beyond our paying any additional cost which may be incurred and, on the other hand, if savings are effected, the owners pay to the Board the equivalent of the savings. We call these agreements "Pooling of Resources Agreements," which aptly describes them.

Now that you are in the war with us, I feel the censor will not be so strict and it will be permissible to pass on information regarding the effects of bombing on power plants and transmission systems. It may be stated quite definitely that complete destruction is confined to quite a small area. Minor damage from blast and flying fragments can be experienced over quite a wide area. So far as electrical plant is concerned, the chief danger, apart from a direct hit, is from flying bomb fragments which have high enough velocity to pass through steam pipes, machine casings, switch tanks, etc.

From this, it follows that a large amount of extra security can be readily obtained by relatively simple local protection. As regards power stations, it was decided to have local protection round all turbo-alternator sets from 30,000-kilowatt capacity upwards, to divide engine room basements and auxiliary plant rooms by bulk head brick-cement walls. The turbo-alternator protection has taken many forms to fit in with the different layouts, but they can be divided into two main classes:

1. Precast reinforced concrete arch segments, in effect enclosing the set in a half circular tunnel. These can be lifted by the crane.

2. Brick work with cement mortar in the form of walls with reinforced roof over specially vulnerable parts. In a number of cases the brick work has been built right onto the casing of the main alternator, completely enclosing the stator with a brick-cement casing, which eliminates danger from flying fragments. I should imagine your government will be getting full particulars of typical arrangements for all sorts of air-raid precautions.

As regards power station switchgear, other reasons had led to considerable subdivision. In our large modern stations, it is divided into physically separated switch houses—usually one switch house for each large machine and a group of feeders so the local protection often already existed. Usually each switch house is divided by a fire barrier into two separate parts, and automatic fire extinguishing is provided. These precautions were taken in peace time.

In all cases, glass skylights and windows are a real danger and have been removed. Oil fires from punctured oil pipes and tanks of turbines, transformers, reactors, etc., are a grave danger, and, therefore, adequate fire-fighting appliances should be immediately available, and the staff properly trained in the use of the same, and in dealing with incendiary bombs. With a staff of fire watchers, proper access to all parts, and adequately trained firefighters, the danger from incendiaries can be reduced to negligible dimensions, but without such precautions the danger to property from fire is probably greater than from HE's (high explosive bombing), as witness the great fire of London just over a year ago.

Near misses will remove all glass, doors, and roofs and then, of course, under blackout conditions, it becomes very difficult to operate the plant at night. This has not mattered a great deal in this country since nearly all power stations are connected to the National Grid, and it was usually convenient to keep plants that had lost the "blackout" shut down during the hours of darkness until they could be replaced, but we did have one case when our grid substation on a power station site was completely destroyed by a direct hit, and previous near misses had removed doors, windows, and most of the roofs of the power station. This station did run at night for over two weeks—and intensive bombing round it all that time, and then we got new transformers and switchgear in and reconnected to the grid. That was the station where the Cockney fireman worked that I mentioned in my last letter to you.

¶ "MINOR *damage from blast and flying fragments can be experienced over quite a wide area. So far as electrical plant is concerned, the chief danger, apart from a direct hit, is from flying bomb fragments which have high enough velocity to pass through steam pipes, machine casings, switch tanks, etc. From this, it follows that a large amount of extra security can be readily obtained by relatively simple local protection.*"

STEEL frame buildings stand up well. The brickwork panels get blown in or sucked out, doors, windows, floors, and roofs get displaced, but the main framework is seldom damaged. Brickwork supporting heavy weights is particularly dangerous. One side gets blown in by blast and the whole structure collapses.

Under blast, tiles and slates depart like chaff in the wind—hence, considerable stocks of roofing sheets of galvanized steel, or cement asbestos boards and rolls of rubberoid roofing material are useful materials to have on hand under "Blitz" conditions.

Wooden cooling towers are particularly susceptible to damage by blast, but the reinforced concrete hyperbolic type stand up well.

Speaking generally, we have not had much serious damage done to generating plant, though of course at times we have been without the use of some important units for a short time. In fact, there was more plant put out of use by damage to cables, than damage to plant. What damage was done to plant was put right pretty rapidly in most cases. At the present time out of a total capacity of nearly 9,000,000 kilowatts of plant, we have only 55,000 kilowatts, or less than 1 per cent, of plant out of commission due to war damage. During the height of the aerial "Blitz" we sometimes had a considerable amount of plant unusable for short periods up to nearly 700,000 kilowatts, but it was mostly superficial damage and the bulk came back into service quickly. We were always able to meet the load and that is what matters.

The longest time any town has been without a supply is just over four days and that has only occurred in three cases. In all other cases, supply has been on again before the next darkness, or within a 24-hour period.

As regards transmission and substations, paradoxical as it may sound, the most serious damage we have experienced is that to underground cables. They take much longer to repair than overhead, especially the higher-voltage cables, which are oil or gas filled. In one case, we had to remove over a thousand tons of débris before we could get to the cables. It also must be remembered that there are a number of other public utilities that have their services laid underground, and when they are all damaged, there is competition as to who shall get to work first, so it becomes essential to create an authority to decide on the order of precedence for the repairs. We have such authorities covering the whole country and have been satisfied with their decisions, which are dictated solely in the public interest. Usually we get first priority—but we do not press unduly for it unless it is really immediately essential.

As regards overhead distribution, this has stood up extremely well under war conditions. We have had no towers completely destroyed. Of the three main war hazards, bombs, barrage balloon trailing cables, and airplanes crashing into lines, the last two have caused far more faults than bombs. Lines can be repaired so quickly that they do not rank as a serious hazard. The serious damage arises from switchgear, transformers, and reactors. In general, we have not attempted to supply extra guards to outdoor switchgear, although in some important cases we have built barrier walls, because

Three Main War Hazards

"Of the three main war hazards, bombs, barrage balloon trailing cables, and airplanes crashing into lines, the last two have caused far more faults than bombs. Lines can be repaired so quickly that they do not rank as a serious hazard. The serious damage arises from switchgear, transformers, and reactors."

switch tanks offer relatively small area to damage and we have lost very few outdoor switches. Reactors and transformers have been enclosed with brick-cement mortar walls and these have proved sufficient to safeguard against serious damage. We had one case of a heavy bomb within about 20 yards of the walls and no serious damage. A few insulators broken with fragments dropping, some slight damage to the lead sheaths of cables, and a lot of pitting on the brickwork. Without the walls, the transformers would have been perforated all over, and as there were also dozens of incendiary bombs, we should probably have had a serious oil fire and total destruction of the transformers and reactors. In another raid, a few weeks later, another heavy bomb fell within a few yards of the previous hit. This time, the damage was very similar, but in addition fractures appeared in the walls. The damaged portions of the walls were taken down and rebuilt. Some time later a third heavy bomb dropped in the substation at the other end of the walls, but closer to them, and the walls stood up this time and no serious damage occurred. Somewhat unusual to get direct hits in such a small radius in three separate raids.

The substations and underground cable systems of some of the London undertakings have suffered heavy damage at times. On one occasion supply to consumers on one undertaking was completely interrupted, because although the power station escaped serious damage and the grid supply was in order, every HT feeder (underground) from the station had been sev-

ered by bombs. Within two weeks all supplies had been restored. In this and other cases, new cables were laid in the gutters, and, where they had to cross roads, wooden ramps were laid on each side of the cables. Permanent repairs were made later.

Many large centers of population are protected by a balloon barrage so there is no dive bombing in these localities. This makes it difficult to hit specific targets and I am sure the balloon barrages have played an important part in preventing serious damage to power stations. At times, the breaking loose of balloons has caused many faults with their trailing cables, but we get less trouble now than we used to get. The balloons are now equipped with a ripping device which causes them to deflate when they break loose, and so come down quickly. In the daytime, the RAF shoot them down if they break loose. As in all other matters, experience brings improvement.

As the nation girded up its loins for the greatest possible war effort, many troubles arose due to competing demands for manufacturing facilities and for labor, and the supply industry had and still has its share of troubles from these causes. We are now getting along moderately well, but each national spurt to get greater output, and at the same time get more men into the armed forces, brings more troubles. We are now having a terrific combover of all man and woman power in the country. As the troubles manifest themselves, those concerned grapple with them and devise ways and means of overcoming them. Sometimes considerable heat is engendered but we shake down and get our jobs done despite everything.

THE result of these troubles is that the completion of new plant gets delayed, and major repairs and overhauls in power stations take longer than they did in peace time and thus our margin of spare plant is reduced. Despite all these troubles, at the present time, of the total kilowatt plant in the country over 90 per cent of it is available for load. That has only been achieved by great efforts by all concerned, which efforts were greatly stimulated by the determination of the supply industry that all war loads should be met and carried, come what may. We are not through our peak load period yet, but I am now quietly confident that we shall continue to meet all demands—although the load continues to rise relatively quickly.

Some undertakings have lost nearly all their load, others have greatly increased. The national effect of the war was to cause a considerable drop in load immediately due to lighting restrictions. Then load further decreased due to the shutting down of nonessential industries. As war production got into its stride, the load started to come up slowly, and then as the new factories began to come into production, the load grew again. New factories are still coming into production and from the middle of this year, there has been a great increase in units output month by month. While we are not yet at the peak of production, we are rapidly approaching it. By and large the war effect is that our industry lost about two years of growth of load.

In war time, economy has to take second place to security. Our target stock figure of coal was ten winter weeks' consumption in hand by the end of September. In the case of some of

the London power stations with restricted site areas, it was not possible to carry an adequate stock on site. To take care of these cases, my Board put down a central reserve stock of 300,000 tons on a riverside site, from which it can be sent by rail or water to the stations requiring it.

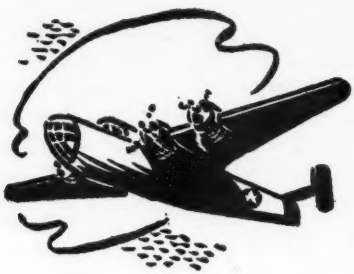
A REASONABLY good national organization has been built up to insure the production and delivery of the coal required to keep the war effort at full bore. I have had to devote a special section of my staff to coal deliveries at all stations for the last two years, and, taking the result by and large, we have managed pretty well, although on occasions we had cause for anxiety, which is only to be expected in war time, but we never failed to supply all demands.

Reviewing our war-time experiences, I feel that our electric industry has stood up to that of war-time conditions much better than anyone would have believed possible. Electric supply is really robust, is not easily knocked out, and when supply is interrupted, it is quickly restored. The public and our government have been really satisfied with the performance we have put up. That good performance has only been possible because all concerned sank their own self-interest to promote the common good. Since the war started, an overwhelming majority of our people have been willing and anxious to help in any direction open to them. In giving that help, they do not seek to make a profit for themselves. Our motto is, help at actual cost where the cost can be met, but anyhow give the help, and see about getting the cost back afterwards.

In these times what matters most is the mental outlook of the people. I am a pretty average sort of bloke, and my own conviction is, I am going to live my life in the way I want to live, and not have it ordered for me by any dictator, and if I can't, then I don't intend to live at all, but before letting go of life, I will do all in my power to knock hell out of our would-be conquerers. I fancy that is the way the average man faces this war. For twelve months the British Commonwealth stood alone, and now that Russia and the USA are partners with us, I have not the slightest doubt but that we shall see the job through to a successful conclusion, and this entails carrying the horror of war through the homelands of the aggressor nations on a worse scale than they have carried it to other nations. In no other way can war lust be extirpated.

Air Raid by Sound Effect

IN a darkened General Electric auditorium in New York city recently, the Illuminating Engineering Society heard a phonograph recording of an actual air raid. The feature accompanied a lecture on air raids and blackouts in England by Davis M. DeBard of Stone & Webster Service Corporation. First sounds were those of the sirens of London. Next the drone of war planes and the staccato "aak, aak" of antiaircraft fire. Then a whistle of descending bombs, a momentary hush, and an earsplitting explosion—one of which threw the needle off the record. Final sound was the "all clear."



Air Lines during the War And Following It

Part II. Post-war Development

In the preceding article (see PUBLIC UTILITIES FORTNIGHTLY, *Vol. XXX, page 135, July 30, 1942, issue), the author discusses the effect of the war on commercial aviation. In this he considers its peace-time outlook and concludes that air transportation and the social and economic changes to follow in its wake will be dramatic and the most far-reaching in the post-war era.*

BY SELIG ALTSCHUL

WHILE the air lines have an uncertain present, they definitely have a brilliant future. The war has provided a convincing demonstration of the fundamental utility of air transport not only in military missions but for the speed in moving materials and key men on the industrial front. Further, military exigencies have been responsible for many aviation advances and developments which should serve as an important impetus to the post-war growth of commercial air transportation.

In any event, the air lines, once the war is over, will stand poised on the threshold of an expansion era that is confidently expected to rival, if not exceed, the railroad expansion at the close of the last century. The expansion heralded for passenger, mail, and freight traffic along with the resultant economic adjustments, can only be partially visualized. Charles A. Rheinstrom, vice president of American Airlines, is quoted as saying: "Even those of us intimately associated with air transport only partially appreciate what is coming in air transportation of the future and the changes in the economic and social structure of the country that will develop."

While subject to glib projections of the future, it is very difficult to trace with any precision the step-by-step development of commercial aviation after the war. It is also probable that the future pattern may be conditioned by circumstances not now discernible.

It is expected that the air carriers

will survive the war period as independent entities. However, regardless of what further adjustments are made, the air lines have received assurances that the separate routes and franchises represented by the certificates of convenience and necessity will be protected. It is therefore a safe surmise that at the conclusion of hostilities, the various air lines will resume scheduled operations where they left off when war demands dictated drastic curtailments in commercial service.

CONSIDERABLE apprehension is expressed as to what is happening to the luxurious commercial air transports converted into cargo planes and now in service for the Army. The comfortable seats and all the colorful trimmings of the interior have been removed and corrugated aluminum now lines the cabins of these once fashionable planes. Many observers point to the deplorable condition of the railroad equipment restored to private ownership after the period of government operation during the first World War. No such concern need be felt for the transports now flying heavy cargo loads for the military.

The once proud Douglas DC 3, the 21-passenger plane now in popular use, was rapidly becoming obsolete by known aeronautical advances. Where purchased directly by the Army, attractive prices were paid to the air lines for this equipment. If operated for the military under contract, the air lines are being amply compensated to offset all depreciation charges. If anything, the air carriers are the chief beneficiaries in the equipment situation as they will not be faced with the problem of disposing of their obsolete planes.

THE commercial airplane of the immediate post-war period will have at least twice the passenger capacity and speed of the present model now in service. This is to say nothing of the increased efficiency and reduced operating costs to be present in these new planes. More on the type of planes to emerge, later.

Considerable experience is also being acquired by the air lines in their various military missions. Flying all types of cargo, pioneering new flight procedures, and learning new developments constantly—all are factors which should redound to the benefit of commercial aviation.

The war has also stimulated much air travel which will not have to be exploited at great expense by the air lines. Because of the emergency, the faint of heart have found it patriotic to take to the air. Past experience has demonstrated that once the skeptic has had his first plane trip, he soon becomes a converted air traveler.

It is also easy to visualize that the expansion of the air lines will require the expenditure of a huge amount of capital. Fortunately, the air carriers have extremely simple capital structures with common stock carrying the burden. There is but a negligible amount of indebtedness in the industry and only four companies have preferred stock outstanding—and small issues at that. The industry can thus meet future financing without concern of burdensome and complicated capital structures.

ANY future air-line financing, however, will be largely influenced by the economic regulation exercised by the Civil Aeronautics Board. This

agency has tremendous powers in shaping the future destiny of the air transport industry.

In the recent American Airlines' air-mail rate decision, the Board succinctly stated the potential growth of air carriers and its own influence as follows:

> In air transportation we can see but dimly the shape of things to come; but there is every reason to believe that the close of the present war will open an era of air-line expansion in the United States and in the international field without historic parallel. These developments will involve capital requirements of great magnitude, which in all likelihood will have to be met with great rapidity. They cannot be satisfactorily met unless those who supply the necessary funds are convinced that the enterprise will have a fair opportunity to secure earnings commensurate with the risk of the undertaking. The final measure of that risk will be determined by a number of factors, not least of which will be the economic results of the present regulatory policy now developing in the administration of the Civil Aeronautics Act.

Yet, the CAB's actual decision in the American Case, coupled with this eloquent statement, is considered one of the finest expressions of double-talk ever to come out of a government agency. In its decision, the Board ordered American to return about $4,000,000 in retroactive mail compensation. Future air-mail payments were also cut in half. American's then president, C. R. Smith, charged that this decision would expropriate substantially all of the company's earnings. Mr. Smith further charged that this decision would, if sustained, "handicap the participation of air transportation in the war program, stifle opportunity for American flag carriers in post-war international air commerce, penalize initiative and enterprise, discourage participation of private capital in air transportation, and ultimately destroy the confidence of the Congress and of the public in the administration of aviation by the Board."

The Board, four months later, recognized the fallacy of its decision, when, in a case involving Pan American Grace Airways, it ruled that it would be "economically unsound" to recapture "excess" earnings realized during past years by the air lines.

In an apparent effort at some face saving, the Board indicated that its future policy would require that such "excess" earnings as it may determine should be credited to a special reserve account to act as a cushion against exigencies of the future. The payment of dividends to stockholders from these reserve accounts would be forbidden. Air-line sources strongly dispute the Board's right to tell the industry what to do with funds thus available and this point is being strongly contested.

¶ "It *is expected that the air carriers will survive the war period as independent entities. However, regardless of what further adjustments are made, the air lines have received assurances that the separate routes and franchises represented by the certificates of convenience and necessity will be protected. It is therefore a safe surmise that at the conclusion of hostilities, the various air lines will resume scheduled operations where they left off when war demands dictated drastic curtailments in commercial service.*"

THE question of air-mail compensation cannot be dismissed as an obtruse, isolated issue of academic interest to delight those who enjoy legalistic palaver. The entire future development of the air carriers definitely hinges on the type of economic regulation administered by the CAB—and it is through the mail rate that this economic regulation is currently being exercised.

The CAB is directed by Congress to determine the "need" of each carrier for "compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier, to enable such carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the postal service, and the national defense."

It is important to note that this broad mandate underlies all air-mail rate determinations and is responsible for the "need" formula developed and applied by the Board to the separate air lines. Hence, mail compensation has a far broader application than mere payment for postal service. As the CAB itself has stated: "The use of the mail payments is a statutory device for the accomplishment of national objectives that transcend the interests of the postal service." This condition makes all mail payments subject to adjustment, up or down, by the Board in keeping with this broad requirement. This in itself is conducive to introducing a condition of uncertainty and instability in the affairs of the air carriers.

THUS far the Board has exercised its economic control over the industry solely through the air-mail rate. It is conceivable, however, that pressure may be applied for the reduction of passenger and express rates. In fact, this question has already received official consideration. In the Delta Air Case early this year, the Post Office protested the air-mail rates awarded the company by the CAB, and requested a reduction in air passenger and express rates. The CAB denied the Post Office's request.

It is likely, however, that no official action may be needed to force lower passenger and freight rates for the air carriers. The equipment of the immediate future promises to reduce operating costs so that lowered passenger fares permitting profitable operations are assured. Reduced passenger and express fares should substantially increase air-line revenues as the industry's market will be considerably broadened.

At present, air passenger fares average around 5 cents a mile. Railroad fares are 2.2 cents a mile in coaches and 3.3 cents in Pullmans. In the past, the railroad coach market has never been an important source of business for the air lines. It is in the highest class of railroad service that the air lines have made substantial inroads and where their influence will continue to be increasingly felt. Even today, it is cheaper to travel by air than by the most expensive rail facilities between New York and Chicago. This excludes any consideration to time-saving economies. Companies placing a premium on the time of their executives have learned a fundamental lesson in economics by using the air lanes. A

Gains in Air-line Traffic

"UNDER normal circumstances the air lines have been making tremendous gains at the expense of first-class railroad travel. This trend is illustrated by the fact that during 1936, air-line passenger traffic, in terms of revenue passenger miles, amounted to about 4 per cent of Pullman travel. This ratio has grown steadily, amounting to about 15 per cent for 1941. Any reduction in air-line fares will tend to accelerate this trend."

$10,000 executive is worth about $4 per hour to his company and unnecessary time spent traveling is nonproductive.

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The Pullman Company is rightly concerned at this development. Recently, an official of the company was quoted as stating that the Pullman Company "would be hard-pressed to retain its normal growth after the war in the face of a resurgence of competition on a greater scale than ever from air transport and other transportation agencies."

To obtain a broader perspective of the air lines' potential passenger market, it is of interest to note that during the calendar year 1941, total domestic air passenger revenues aggregated about $69,000,000. Class 1 railroads, for the same year, reported passenger revenues of $514,687,000—or more than seven times that of the air lines.

It is in the field of air cargo and freight where the greatest expansion will probably take place. New and varied types of airplane equipment will be very evident in this new sphere of activity.

THE war has already demonstrated that cargo armadas can move by air whole regiments of armed men, that individual airplanes can carry anti-

tank guns, jeeps, 6-ton tanks—in fact, almost any material up to 10 or 12 tons.

A consulting engineer of note, Grover Loening, pointed out recently that 40,000 planes of the present B-19 type could carry cargo equivalent to the capacity of 20,000,000 tons in surface shipping, the aggregate of all the surface ships in the United Nations' pool. He said further that 45,000 aircraft of the type now being flown every day could carry the freight now being hauled by nearly 2,000,000 freight cars.

A number of exclusive cargo ships are now—or soon will be—in active operation for the military. For the most part, these planes represent adaptations from equipment originally designed for commercial passenger service.

In this group is the DC 4, now being produced as the Army's C-54, a 26-ton cargo and troop transport ship. Another air freighter is the C-46, originally the Curtiss CW-20, a transport model. The Lockheed Constellation is soon to be test flown. It has a capacity of sixty-four passengers, including a crew of seven, or a capacity of over 16 tons of cargo when used as a freighter. Cruising speed is 283 miles an hour, range is over 4,000 miles, and supercharged engines and cabin permit operations up to 30,000 feet with low-altitude comfort. It is claimed that 40 of these planes could move a million pounds of cargo overnight from the West coast to Honolulu. These are only three of the types of ships now building.

There are reports that construction is going forward rapidly on even more specialized cargo planes.

VERY much in the news recently was the "Mars" — the 140,000-pound flying boat built by Glenn L. Martin Co. This plane has 16,700 cubic feet of space in the hull, equivalent to the average 15-room house. Plans have already been revealed by Martin for a 250,000-pound airplane. Martin and other aircraft builders maintain that they do not recognize limits of size to which airplanes can be built, other than the daily volume of cargo required to be hauled and the efficiency surrounding the number of daily trips required.

Gliders will undoubtedly occupy a leading part in the coming development of air freight operations. Gliders have already been termed the freight cars of the air. Mr. Loening is again the authority on this coming development. He maintains that loads can be carried on gliders at two or three times the efficiency possible with the aircraft themselves. Versatility in the picking up and delivery of cargoes that greatly enhance the practical results of air transportation is also claimed. A locomotive plane was visualized by Mr. Loening as leaving La Guardia field in New York with a train of six gliders —and this in the very near future. By dividing the load, there would be the practical facility of unhitching the car that must land in Philadelphia as it flies over that city, unhitching the car that has to land at Washington when reaching there; then Richmond, Charleston, and Jacksonville, as each city is passed—and finally the air locomotive itself lands at Miami.

As yet operating costs in military air cargo operations are secondary. To be practicable, these flying freight-

ers—be they large aircraft or glider trains—must prove their actual operating costs to be lower than ground transportation. How soon after the war these new cargo planes will be placed in actual operation and fulfill their promise remains an intangible unknown. Many aeronautical authorities flatly assert that this development will come very soon and will be quite fantastic in scope.

It is a certainty, however, that the air transport industry's air express revenues of less than $3,000,000, reported for 1941, are bound to see a tremendous increase at the expense of ground transportation facilities. The railroads, last year, reported total freight revenues of almost $4,500,000. This is fair game for the air lines.

It is small wonder that the railroads are very much disturbed as to their future place in the country's transportation scheme. The Gulf, Mobile & Ohio Railroad Company has already filed with the Civil Aeronautics Board for a certificate to fly freight, mail, and passengers from New Orleans to Chicago, largely paralleling its present rail route.

Other railroads are reported as actively considering air freight operations as an active measure for their own protection.

Along with the changes in the transportation pattern will come major adjustments in the social and economic structures. Many of our present-day concepts are going to submit to some radical changes.

For example, the idea of a shore line as a boundary for commerce is on the way out. An ocean vessel must stop and discharge its cargo when it reaches the coast because the medium through which it travels has stopped. The same conditions pertain in like measure to trains and trucks. Air, however, is everywhere. For that reason, it is the best medium for transportation—which only the airplane can utilize.

Among other things, this will mean that the harbor of New York city may lose its present commanding position. Using the great circle course, and with no barriers, there is no reason why many inland cities such as Detroit and Chicago cannot become great inland ports to handle European traffic.

As to the shipping routes of the world, the controlling influence of great canals, such as Panama and Suez, will cease to have their dominant meaning. Mr. Loening is the authority for that contention and he goes on to further assert that they will be looked back upon, in the complete air age to come, as little ditches dug in a by-gone era—not unlike the obsolesence of so many

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barge canals that have become relics today. New concepts involved in cargo handling of transoceanic shipments will alter the present method of using concentration ports that are terminals for unloading land transports for reshipment in vessels. Rubber from Brazil need not land in New York to be transshipped and then sent by rail to Akron. The new concept predicts that rubber will come directly from Brazil to Akron right alongside the tire factory.

A CONSIDERABLE decentralization of industry, with consequent shift in population areas within the continental United States, also appears in the offing. For example, a theoretical study by United Air Lines shows what new industry changes are possible.

Omaha is but twelve hours by air from the most distant point in the United States. This city could develop its own leather industry by using the hides now shipped to other centers. With the aid of the cargo plane, it is estimated that 100,000 hides a month could be turned over to its own leather industry for development and would account for about $600,000 in new money to the city every month.

More immediately apparent is the fact that the need for large inventories will disappear as cargo planes make overnight deliveries of supplies from sources of supply to virtually any locality in the United States.

With this change will come adjustments in local banking practices. There will no longer be the same need for local banking accommodations to finance inventories; the factories will have that responsibility.

WITH every major advance in transportation, man was able to move farther and faster. What was a market neighborhood affair soon became statewide, then nation wide, and, finally, world wide. All sorts of inventive genius have come into play. Ever-widening markets has meant increased volume which in turn cut production costs and which resulted in better products at lower prices. All this has been conducive to a higher standard of living and the conversion of the luxuries of yesterday into the necessities of today.

Each in its turn—the steamboat, the railroad, the automobile—represents a major advance in transportation. And now the airplane has emerged.

The evidence multiplies that this form of transportation, and the social and economic changes to follow in its wake, will be the most dramatic and the most far-reaching in the post-war era to follow.

Official Recognition of Natural Gas

"To meet the new situation and to recognize the importance of natural gas and natural gasoline in the war, we are creating a natural gas and natural gasoline division which will function in the same manner and on the same level with the other operating divisions in our office. The natural gas and natural gasoline division will occupy a position parallel with the production division, refining division, transportation division, and marketing division of the Petroleum Coördinator's office."

—HAROLD L. ICKES,
Secretary of the Interior.

The Mote, the Beam, and The Revenue Bond

Is it not inconsistent, asks the author, for the Federal government to decry inflation through individual spending while at the same time encouraging municipalities and other political subdivisions to be wasteful and extravagant with public credit through long-term financing in the form of revenue bonds? As long as the government has cracked down on private instalment buying to make the individual live within his means, why do we not take a longer step in the same direction by checking public instalment "buying" and make our cities, towns, etc., live more within the limits of their legal taxing powers?

By JONATHAN BROOKS

My niece has been stewing around with the idea of buying a kitchen range, either electric or gas. She has a little kerosene affair that serves, but her two children are small and her house is frame construction. Her work would be easier and her home safer, she feels, with a new range. Her husband has been working regularly for some time and their living seems a bit more secure.

But my uncle (Sam, that is) does not want my niece to go out and start inflation, because inflation is bad for her and for all of us, and, he warns, for him, too. So he is making her problem tough. He is keeping ranges off the market, the best he can, and, knowing that most ranges are bought on the instalment plan, he is gumming up the easy-payments idea. She has to make a big down payment, Uncle Sam says, a bigger one than has been customary in the past. And more than that, she has to get all the payments made in half the time, or less, than was the rule before; somehow, my uncle stumbled on the notion that inflation is bad and *she* could cause it!

I do not know whether she will be able to buy her new range. She is a persistent little person, but the restrictions are hard and the implications of guilt in committing inflation boil down to unpatriotic selfishness. It seems tough on her little family, because her mother and her grandmother understood that people do not buy things, but merely buy the *use* of them.

We do not own this war, any more than we yet own (in the sense of having paid for it) World War I. We have a small equity, and we have the *use* of this war, but we'll be making payments on it for a long time, before we can take title and claim it for our own!

THE MOTE, THE BEAM, AND THE REVENUE BOND

Now, I have no quarrel with my Uncle Sam if he wants a war, or can't dodge one, and has to buy it on the instalment plan. On the contrary, I have even more sympathy with him than I have for my niece in her yen for a range. I can't afford to lend her any money for her stove, but I am lending *him* as much as I can after I get my income taxes paid. And both my loans and taxes are applied on the payments for his war, our war.

What makes me sore is that my uncle should go around accusing my niece of starting an inflation! She did not invent the instalment plan. She did not restrict the manufacture of commodities to make them scarce, and she certainly had nothing to do with lowering interest rates to make money ruinously cheap! Not knowing much about such things, she has no rebuttal. She cannot suggest to Uncle Sam that if he would encourage commodity production somewhat and at the same time enrich our money (either concretely out of precious metal hoards, or indirectly by raising interest rates) *maybe* we should not need to be so frightened by the thought of inflation. No, she cannot suggest such things. She merely winds up, with her neighbors, believing that she *is* the guilty party in this inflation crisis! Because my uncle said so, and it's unpatriotic to doubt him!

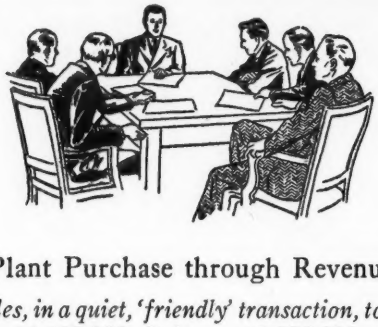
And there you are. I rise now to suggest that, while it may not help my niece, it should be good for Uncle Sam to forget the mote and get on the beam! Let's alsmith the record, a bit.

Farmers out here in my state wanted electric service, just as my niece wants a range. Uncle Sam sympathized with them; so did I; so did everybody else. So he has loaned them the money, via the U. S. Treasury, the RFC, the REA, and the REMC's. They had *no* down payment to make, where my niece worries about 25 per cent of the price. They got twenty to twenty-five years of easy payments, by contrast with, say, six months. Their total cost now exceeds $20,000,000 in this state, and they are getting their lights, ranges, refrigerators, and feed grinders. A good thing, too. (There are extra or different instalment plans, at my uncle's place, for farmers who also wish to finance equipment to use the electric service they are getting!)

My uncle was so enthusiastic over this instalment plan idea that, having no money of his own to finance it with, he went out and borrowed it; *then* loaned it without withholding a first payment or the first interest charge! And when the farmers have finally made their last payment, in twenty or twenty-five years, they will have paid *not* $20,000,000 merely, but more likely about $30,000,000. It's the interest, you see, that piles up the bill in this instalment plan. Inflation, what?

But wait! We have a much horribler example out here, all around our neighborhood. It is the so-called "revenue bond," illegitimately called a security at the behest of my uncle's boys there in Washington. He put them in charge, these cousins, back in 1933, and one of the first things they did, even while enacting new laws for Uncle Sam, was to send out a flock of new statutes for the states to enact.

Now, our statesmen were smart enough, even though they were of the same political faith as the boys in Washington, to turn down several of



Water Plant Purchase through Revenue Bonds

"A CITY *decides, in a quiet, 'friendly' transaction, to buy a poor water plant for $1,125,000. It issues $1,275,000 of 'revenue bonds' on a 40-year contract. The bond house sells them for more than $1,300,000. Under the original terms, the city would have paid $2,550,000 for that $1,125,000 plant (and* THAT *price was high) before it was clear of debt. Instalment buying, no down payment, long terms—inflation, yes or no?"*

these hand-out laws. But there was one measure that carried an appeal—an act to legalize the revenue bond as a finance instrument for cities, towns, and other units having or wishing means of inducing revenue. At the time, our cities and towns had a total bonded debt of about $30,000,000, and many of them could not borrow much more money. Our state Constitution provides that no unit may issue general obligation bonds to the amount of more than 2 per cent of its tax valuation. This, because our forepaws were thrifty, or had never heard of the instalment plan!

SOME of our cities wished, and some even needed, to borrow money more freely, so the legislature, no questions asked, enacted the little statute legalizing revenue bonds. It *is* a simple affair. No complications. It requires no public notice by city officials of their intention to borrow money, or create debt. (Debt? This "bond" is widely and highly touted as a means of borrowing *without* going into debt!)

This statute does not even require units to obtain bids on their financing! The best offer means nothing, in the eyes of our imported law. Secrecy and stealth flourish. We have cases where revenue bonds were one month old (by the date upon them) when ordinances were adopted authorizing them! Easy financing? You never saw anything like it.

The tax unit promises that it will get in enough revenue, *not* from taxes but from the sale of water, electricity, sewage disposal service, swimming pool enjoyment, or whatnot, to pay interest and redemption figures on the revenue bonds. Once in awhile, if city officials are stupid or complacent, they agree that the bondholders shall have

the right to name a receiver if the venture does not produce profitably; but more often, no mention is made of a receivership. The citizen of the unit has no knowledge of the terms in the revenue bond deals, except when his officials wish to tell him about them. He has no control, nor any formal place in which to criticize or obtain correction of business mistakes.

NOT only that, there is no state supervision worth mentioning. We have a Securities Commissioner to see that private individuals and corporations do not commit blue-sky crimes, but nobody has authority to head off public corporations! Yes, we made our financing easier, with our uncle's blessing, not to say sponsorship.

A town votes to buy an electric system, figured to cost $150,000. Then it issues $285,000 of "revenue bonds," on a 20-year contract or instalment plan, having not a dime for down payment. When the contract is finished, it will have paid $373,500. Inflationary? Worse words are used by some of the citizens, but they cannot block the deal.

A town wants a water system. It promises to get 400 customers and set up a $1 a month minimum bill. A bond house man comes along and lends $68,000, taking "revenue bonds." He sells them for $72,000 to a nice old farmer upstate. The town produces only 250 customers, and decides the $1 minimum would be a hardship on poor folks; more, the contractor shorts on his agreement as to depth of wells. The pump goes bad, the mains deteriorate. (No supervision, either for the town, the water users, or the investor except that the state board of health complains about bad water.) The bondholder gets nothing in five years. Last known, he was being asked to invest $15,000 *more* to make it a good venture!

A CITY decides, in a quiet, "friendly" transaction, to buy a poor water plant for $1,125,000. It issues $1,275,000 of "revenue bonds" on a 40-year contract. The bond house sells them for more than $1,300,000. Under the original terms, the city would have paid $2,550,000 for that $1,125,000 plant (and *that* price was high) before it was clear of debt. Instalment buying, no down payment, long terms —inflation, yes or no?

And we like it—or do we? Since 1933, starting from scratch, our cities and towns have borrowed more than $50,000,000 by the issuance of revenue bonds, so-called. We do not know who ultimately buys them, nor care very much, except in such cases as provide for receivership in the event we are poor operators. More, we sometimes suspect that the buyers themselves do not care very much *what* they buy!

The $30,000,000-odd of general obligation bonds our cities and towns had outstanding in 1933 have now shrunk to less than $25,000,000. That total was many years in the compilation. But in less than ten years we have easily financed to the extent of double our properly "bonded" debt. And, since the "revenue bond" contracts never run less than twenty years, it is likely that our repayments for the fifty million will reach or exceed $75,000,000 before we are through! Even with the prevalent low interest rates. Cheap money is expensive when you cannot make a down payment and take a long time with the easies!

AND there you are. My uncle has got us instalment buying in just two fields to the extent of $20,000,000 and $50,000,000, and the lump cost will reach around $105,000,000 before we, collectively, are through! But my niece may not be able to buy her range because to do so would produce inflation. It would take a lot of nieces buying a lot of ranges to halfway match my uncle—but never mind.

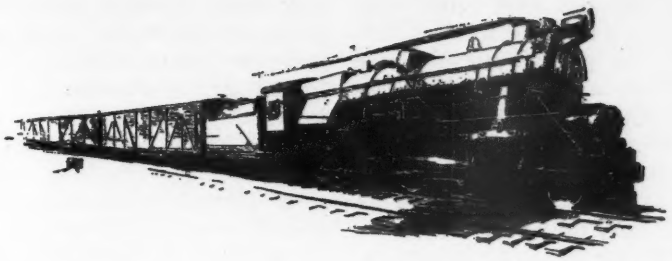
If my uncle will keep his queer economic hands off, we may be able to correct the lamentable "revenue bond" statute, but not with any mistaken notion about curing inflation, merely. Some earnest state officials tried to improve the legislation four years ago with proper and fair safeguards, but had to wait until some lobbying city officials got *their* easy financing done. And two years ago, they almost got their amendments enacted, the stumbling block that time being some bond houses which hate to lose "securities" so easily acquired and so loosely supervised. They are persistent, these state officials, just like my niece, and at the next session of the legislature may obtain the desired statute improvement. If they do, their success may be a solid if left-handed blow at the inflation my niece is trying (according to my uncle) to perpetrate. But somehow I wish, sort of, that with those little children in the house, she could get away from kerosene over to gas or electricity. If my uncle would just quit accusing the motes and get busy with a few of his own beams!

Gas Is Called to the Colors

"THE *natural gas industry has felt the impact of war and war preparation from the very beginning and has responded consistently with the increase in the demands made upon it. That we will continue to do so is the solemn pledge which I am sure we all carry with us and shall do so until the successful outcome of this war.*

"The petroleum industry and the natural gas and natural gasoline industry are indispensable from the military standpoint of this country. This is a mechanized war. Fuel and lubrication are essential, not only for the production of war equipment, but for its movement to and operation in the actual areas of active war. Natural gas is not only the preferred, it is the necessary source of heat in many of the processes which enter into armament manufacture."

—J. FRENCH ROBINSON,
President, East Ohio Gas Company.



Corporate Control As a Factor In Railroad Rate Making

Because of the organization of the freight-rate structure along regionalized lines, the Official rail lines, the author declares, can protect most of the Official Territory from the infiltration of southern and western manufactured products. The Interstate Commerce Act amendment to make unlawful, discrimination against regions.

By FRANK L. BARTON
FORMER CHIEF, ECONOMICS SECTION, TENNESSEE VALLEY AUTHORITY

THE Transportation Act of 1940 amended the Interstate Commerce Act to make unlawful undue discrimination by common carriers against "region," "district," and "territory," adding to the already sizable list against which discrimination is forbidden.

From the numerous economic and political forces that led to the passage of the amendment one stands out as the fundamental cause—the regionalized freight-rate structure of the United States. The freight-rate territories, each with a separate rate structure, are shown on map, page 227. The interpretation and administration of the law by the Interstate Commerce Commission, plus the institutional frictions imposed by the administrative procedures of the railroads, were also important factors in causing undue discrimination against regions to be designated as illegal.

The discrimination arises, in part, from the natural desire of northeastern rail carriers and manufacturers to protect from outside competition their home territory, designated in rate-making parlance as Official Territory. The manufacturers fear encroachment upon their markets; the railroads are afraid that the northbound interterritorial movements would produce short

hauls and divided rates rather than long hauls and through rates.[1]

Under the present rate structure producers of manufactured goods located in either Southern, Southwestern, or Western Trunk-Line rate territories have two courses of action between which to choose if they ship finished goods by rail to the most desirable of all the national markets, the densely populated North and East.

In the first place, the goods may be shipped to Official markets on the prescribed class rates. In taking this course the shipper is under a decided handicap because he must pay higher rates, mile for mile, than are available to competitors located in Official Territory. A second course of action open to southern and western producers is that of attempting to obtain a commodity rate[2] to displace the prevailing class rate into Official Territory. To compete on even terms from a transportation standpoint, the rate obtained should be on a parity, distance considered, with that paid by the producer shipping entirely within Official Territory.

SUPPOSE that the producer elects to assume the burden of shipping into Official Territory on the existing class rates. Given a certain market price, a producer will actually receive that price minus the freight charge to the market. In other words, someone in the outlying territory must receive a reduced income because of the higher freight charge. The Interstate Commerce Commission has held that when producers in the South and West market goods in the North they must absorb the difference in freight rates.

Suppose the producer of manufactured goods located outside Official Territory chooses the alternative of trying to obtain a commodity rate that is on a parity, distance considered, with the rate paid on the same product by a manufacturer located in Official Territory. Attempting to gain such a commodity rate is usually a long-drawn-out process with little assurance of success.

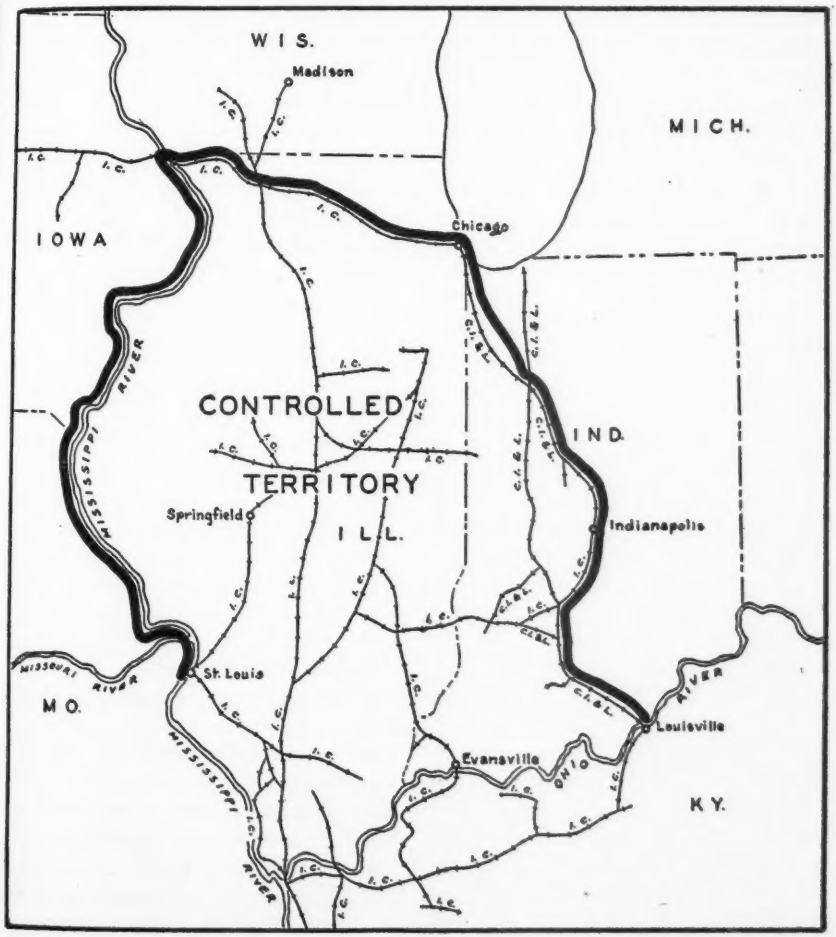
To start the procedure, the shipper in the outlying territory submits his request to the railroad that serves his plant. This railroad transmits the proposal to the freight rate association of which it is a member. The freight rate association passes the request to the various railroads in the organization. Because this is a proposal to ship goods into Official Territory, it is also submitted to the association within Official Territory concerned with the movement. The railroads that are members of this Official association are then notified of the proposal to construct a rate from the outlying territory into Official Territory on a parity with Official rates. The member railroads are allowed to object to the proposal, copies of which are transmitted to other members of the organization. Shippers are notified of the proposal in several ways, chiefly through transportation and trade publications.

[1] Official Territory rail systems run predominantly east-west: New York-Cincinnati, Boston-Chicago, and Detroit-New York. Although a route like Memphis to Cleveland is longer than Chicago to Cleveland, the latter covers more distance in Official Territory. Likewise, in the haul entirely within Official the Official carrier is more likely to receive all the comparatively high local rate, whereas in the haul originating outside the territory the Official carrier must share the revenue with the originating carrier.

[2] A commodity rate is a freight rate made to meet unusual circumstances applying to specific movements of traffic and supersedes the class rate for the movement.

If less than three objections from members of the association are received, publication of the rate is authorized. Before the rate becomes effective the publication in which it is made must be posted and filed with the Interstate Commerce Commission in accordance with its regulations.

If objections are received, the proposal is placed on the docket for the next meeting of the general committee of the association. On the date of hearing before the general committee the matter is discussed, and a vote of the membership is taken. The committee makes its recommendation according to the majority vote of the general committee. From this an appeal may be taken to the executive committee of the association, where a majority decision constitutes the recommendation of the association. On the basis of this



procedure bureaucracy is apparently not confined entirely to government agencies.

Even when the southern and western carriers are willing to join with the railroads in Official Territory on a level of rates equal to that available for industries located within Official Territory, this parity of rates is generally denied because of the power held by the Official carriers to refuse to concur in rates lower than the class rates prescribed by the Interstate Commerce Commission. A compromise may be made, but the rate agreed upon will usually be higher than that prevailing within Official Territory. Thus, the producer of finished goods in the South and West is usually forced to market his products in the North and East under the double handicap of higher rates per mile and a longer haul to market.

Of course, appeal may be made to the Interstate Commerce Commission, but the average shipper cannot afford the cost of carrying a case to the commission. Even though he can bear the expense, a favorable decision is by no means assured because the pattern of relatively higher rates on manufactured goods in the South and West as compared with the East has become so firmly fixed during the years that to change it in an individual rate case might distort the whole rate structure. For these reasons the commission often has been reluctant in an individual proceeding to order a rate reduction even when the disparity complained of is evident and has no justification other than custom.

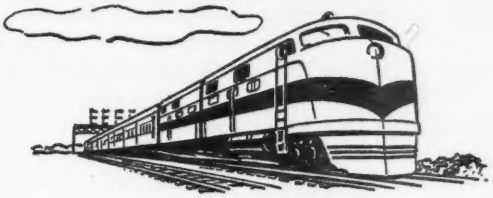
Therefore, the producer in Southern, Southwestern, and Western Trunk-Line Territory finds that neither of the courses of action available facilitates the movement of his goods into Official Territory.

The producers in the South and West who wish to market goods in Official Territory would probably agree with Joseph B. Eastman, chairman of the Interstate Commerce Commission (now head of ODT), that the maintenance of artificial territories for rate making and classification cannot be justified by existing traffic or transportation conditions.

The attitude of Official carriers toward concurring in joint through rates on manufactured goods coming into Official Territory is typified by the experience of southern roads that have attempted to obtain concurrence in recent years. The northern carriers generally insist that manufactured goods from Southern Territory bear higher rates than prevail within Official Territory.

On occasion the northern lines have even insisted that such interterritorial rates be on a higher level than that which prevails in either Southern or Official Territory.

The story behind the Official carriers' attitude is this: Industrial development in Southern Territory before 1880 was slight. Since 1890, however, this region has shown considerable industrial progress. The increased production made available more manufactured goods for movement into Official Territory and caused southern carriers to increase the number of requests for concurrence in north-bound rates on the Official level. Before 1920 the Southern carriers, with the concurrence of the railroads north of the Ohio river, were able to



Extension of Southern Railway System

"In 1907 the Southern Railway built an extension from its Louisville-St. Louis line to French Lick, Indiana, connecting with the Monon. As a result, the Southern Railway obtained through routes from southern Indiana and Illinois to Chicago and Indianapolis in connection with the Monon. Also, the Southern and Monon comprised a direct route between Chicago and Evansville, Indiana, where physical connection is made with other lines extending into Southern Territory."

carry out the policy of maintaining rates from Southern into Official Territory on a level with those prevailing within Official, allowing southern producers to reach the markets in the North and East on rates equal mile for mile with the rates used by producers located in Official Territory. The Northern roads concurred because often the traffic was not highly competitive with goods produced on their lines, because the total industrial production of the Southeast was comparatively small, and because in some cases there was a desire to develop traffic from the South. With the end of Federal control on February 29, 1920, the Official Territory lines reversed their policy and refused to concur in northbound commodity rates on manufactured goods on the same level with rates on similar goods moving entirely within Official Territory.

In the 1890's, when concurrence was comparatively easy to obtain from Northern carriers, a number of individual lines extending north from the Ohio river were interested in developing movements of traffic north and south and coöperated with Southern roads. But now every connecting line extending northward from the Ohio river crossings at Cincinnati, Ohio; Louisville, Kentucky; and Evansville, Indiana, except the Chicago, Indianapolis & Louisville Railway Company (known as the Monon) and the Illinois Central, is owned, controlled, or operated by Official carriers interested mainly in east-west traffic.

Likewise, every important railroad running north from St. Louis (excepting the Illinois Central) is controlled by some Official line. According to testimony given before the Interstate Commerce Commission, the Official

Territory systems that have acquired control over the north-south lines are the principal Official carriers making physical connection with the Southern rail lines: the Baltimore & Ohio Railroad, Pennsylvania Railroad, New York Central Railroad, and the Chesapeake & Ohio Railway.

With changes in ownership and control came changes in rate-making policy. In the words of E. R. Oliver, vice president of the Southern Railway, when he appeared to testify against acquisition of the Monon by the Baltimore & Ohio:

> The new policy of these connections is to build a rate wall at the Ohio and Potomac rivers which will prevent or greatly curtail the movement of southern products into Official Territory.

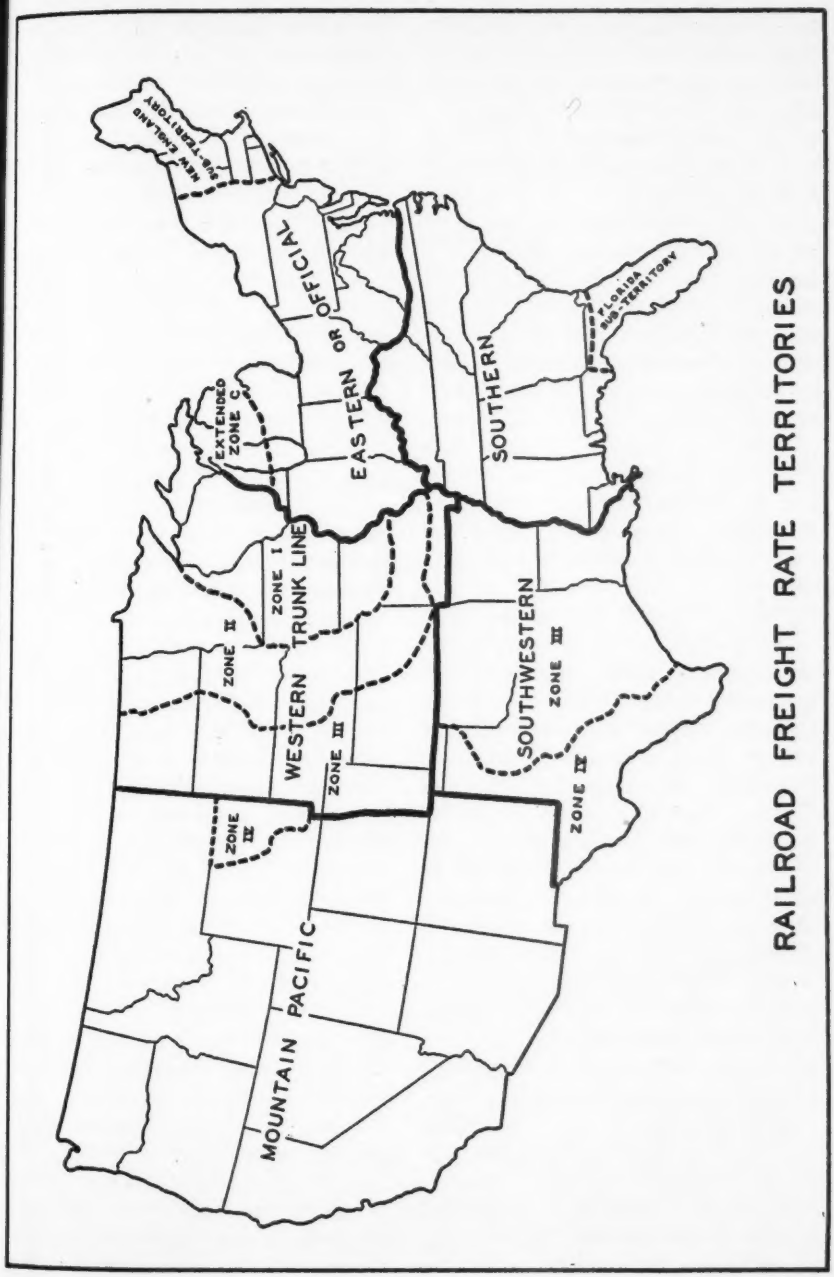
THIS new policy was brought on partly by producers on the Official carriers' lines complaining of the competition from products in the South and partly by the desire of the Official carriers to obtain as long a haul as possible on their own lines, which run predominantly east and west. Generally, much longer hauls and greater revenue can be obtained for the Official lines if the traffic moves entirely on Official lines than if the haul, and thus part of the revenue, is shared with a southern carrier.

That the Official carriers have consistently opposed since 1920 the movement of southern products into Official Territory is borne out by their attitude in numerous cases concerning northbound interterritorial rates. The commission has recognized that eastern producers have brought pressure to bear on Official carriers to increase the rates on competitive traffic from the South.

In 1939 the Interstate Commerce Commission, in a decision concerning northbound interterritorial rates on manufactured goods in which parity with Official rates was requested, held that the Official carriers control the rates within the North and from Southern to Official Territories except to points in Official Territory on and west of the Chicago, Indianapolis & Louisville Railway. (235 Inters Com Rep 255, 329.) Thus the commission took official cognizance of the fact that northern railroads were exercising a restraining influence on the flow of commerce between regions of the United States by virtue of the power to refuse to concur in interterritorial rates. The Official level of rates was granted on a number of items with which the case dealt.

DESPITE the control exercised by the Official carriers, southern producers of manufactured goods are generally able to obtain commodity rates lower than existing class rates into a portion of Official Territory designated as "Controlled Territory" in transportation terminology. The rates are obtained by virtue of the policies of two railroads whose predominant interest in that area lies in movement of traffic south to north, the Chicago, Indianapolis & Louisville, known as the Monon, and the Illinois Central System. These rail carriers make it possible for southern shippers generally to obtain the Official Territory level of rates into most of Illinois and a portion of western Indiana, which constitute Controlled Territory.

The Monon accords favorable rates to manufactured goods from the South principally because it is controlled by


RAILROAD FREIGHT RATE TERRITORIES
NEW ENGLAND SUB-TERRITORY
EASTERN OR OFFICIAL
EXTENDED ZONE C
SOUTHERN
FLORIDA SUB-TERRITORY
ZONE I
ZONE II
WESTERN TRUNK LINE
ZONE III
SOUTHWESTERN
ZONE III
ZONE II
ZONE III
ZONE II
MOUNTAIN PACIFIC

two southern carriers, the Louisville & Nashville Railroad and the Southern Railway. As noted previously, the Monon is one of the two railroads extending north from the Ohio river that is not owned, controlled, or operated by Official carriers.

In 1907 the Southern Railway built an extension from its Louisville-St. Louis line to French Lick, Indiana, connecting with the Monon. As a result, the Southern Railway obtained through routes from southern Indiana and Illinois to Chicago and Indianapolis in connection with the Monon. Also, the Southern and Monon comprised a direct route between Chicago and Evansville, Indiana, where physical connection is made with other lines extending into Southern Territory.

THE other railroad making Controlled Territory possible, the Illinois Central, makes its contribution because its rails extend from New Orleans to Chicago and from Chicago west to points in Western Trunk-Line Territory. As mentioned above, the Illinois Central from Chicago to Dubuque, Iowa, where the railroad crosses the Mississippi river, marks the northern boundary of Controlled Territory. With lines extending predominantly north and south, the Illinois Central is naturally interested in traffic from Southern to Official Territory; consequently it joins southern carriers in competitive rates applying from the South into Official Territory.

When the Monon and Illinois Central join in favorable rates on southern manufactured goods, many of the Official carriers operating in Controlled Territory meet the rates in an attempt to obtain the traffic which will be delivered whether the Official railroads haul it or not. East of the Monon, outside Controlled Territory, these same Official lines will not concur in similar rates because there the control of freight rates is in the hands of the Official carriers.

Thus the situation exists: The southern producer of manufactured goods can often obtain a favorable level of commodity rates into Illinois and part of Indiana, but to the remainder of Official Territory these favorable rates are denied because the control over rates is exercised by the Official lines without regard of the effect on an unhampered flow of commerce.

The Interstate Commerce Commission recognized the importance of the position of the Monon in maintaining "healthy competition" between Official Territory and Southern Territory when the Monon was allocated equally in the commission's consolidation plans as modified in 1932 to two carriers in Southern Territory rather than to the Baltimore & Ohio as was originally provided in the plan of 1929. The modification was made after evidence was received that the Monon was the only carrier connecting with Southern Territory carriers at the Ohio river that was willing to join in favorable northbound interterritorial rates from the South to the North.

SOUTHWESTERN Territory is on the whole located farther from the markets of Official Territory than Southern Territory and has less industrial development than either Official or Southern Territory. The producers in Southwestern Territory in endeavoring to reach markets in the rate territory east of the Mississippi river and

north of the Ohio and Potomac rivers find that the Official carriers generally refuse to enter into joint rates with Southwestern rail lines that will allow merchandise from the Southwest to move into Official Territory on the same basis of rates applying on goods produced within Official Territory.

It is apparent that the chances of realizing unrestricted internal trade are lessened considerably when railroads insist that goods moving over their lines from other territories must pay a penalty similar to a protective tariff.

In 1930 the Interstate Commerce Commission established class rates to apply within Western Trunk-Line Territory and from Western Trunk-Line to Official Territory on a level higher than that prevailing within Official. The commission justified such action by the following reasoning:

> Class rates in W.T.-L. Territory appreciably higher than in Official Territory are justified also by the nature and volume of the articles moving under such rates in the respective territories. Many articles handled in enormous volume pay class rates in Official Territory, whereas in W.T.-L. and Southern territories they enjoy commodity rates lower than the corresponding class rates. This in a large measure will account for and warrant relatively low class rates in Official Territory as compared with other territories. (164 Inters Com Rep 202.)

Apparently the higher level of class rates prescribed from Western Trunk-Line to Official, compared to that within Official, was not satisfactory because in 1931, in a decision supplementary to the original Western Trunk-Line Class Rates (173 Inters Com Rep 637), the commission said that the established class rates are often too high to allow producers in Western Trunk-Line to compete with Official producers; so the rail carriers are urged but not required to depart from the class rates and allow commodity rates lower than the class rates.

In still another supplemental report (204 Inters Com Rep 595) the commission notes that this admonition has been given the carriers and that it did not result in the carriers' showing the necessary consideration and establishing "nonprejudicial competitive rates lower than the maxima wherever conditions warrant." It was stated that shippers who believe themselves entitled to rates lower than the prescribed class rates have complained and the railroads have admitted that practically nothing has been done about ironing out the maladjustments attendant upon making available prescribed class rates.

The same report gave indication that the Western Trunk-Line carriers are at a disadvantage in dealing with Official carriers. It was tactfully stated, in regard to interterritorial rates, that the several territorial associations of rail carriers were not in entire harmony and that certain features seem to have been adopted by the Western Trunk-Line carriers with some reluctance.

¶ *". . . the producer in Western Trunk-Line finds that the presence of a comparatively high level of class rates applying into Official Territory is difficult to overcome. A lower commodity rate is hard to obtain on a heavy movement of traffic. . ."*

Despite the commission's recommendation that the railroads make lower rates on traffic produced in Western Trunk-Line Territory when conditions warrant, commodity rates based on a fixed percentage of the class rates have been prescribed or approved by the commission on a number of important agricultural and manufactured products of Western Trunk-Line Territory. As to packing house products, a commodity moving in great volume from Western Trunk-Line to Official in competition with movements entirely within Official, the commission held that if the rates on packing house products were related as are the class rates, the resulting adjustment of rates would be a fair one. (220 Inters Com Rep 171, 180.)

Therefore, the producer in Western Trunk-Line finds that the presence of a comparatively high level of class rates applying into Official Territory is difficult to overcome. A lower commodity rate is hard to obtain on a heavy movement of traffic, even though the commission has stated that the carriers should consider making rates lower than the existing class rates when manufacturers in Western Trunk-Line Territory can reasonably expect to compete with Official producers.

THE ICC has not, however, been entirely oblivious of the conditions engendered by the rate structure. In July, 1939, anticipating the item in the Transportation Act of 1940 that provides for such an investigation, the commission announced the Class Rate Investigation, ICC Docket 28300, for the purpose of considering whether one rate level or fewer and more closely related rate levels than are now in use are lawful and economical. All the rate territories except Mountain-Pacific are included in the proceeding.

The investigation was undertaken, according to the ICC, because competition between different transportation agencies has brought about numerous departures from rate-making principles observed in the past and because there has been widespread expression of opinion that existing class rates are outmoded and obsolete. Whether alteration in the rate structure will be forthcoming from the procedure cannot be predicted, but it is fairly safe to prognosticate, judging from the best Interstate Commerce Commission tradition, that a decision will not be handed down soon.

Only one hearing has been held since the investigation was inaugurated in 1939.

Dog-drawn "Taxis" Replace Motor Vehicles

DOG-drawn taxicabs have appeared on the streets of Paris, because the lack of fuel has forced the withdrawal of motor vehicles and most harness horses have been sent to the slaughter houses. A 1925 law prohibiting the use of dogs for traction power has been canceled and a new police ordinance permits "canimobile" taxis, provided they be drawn by huskies fitted with painless harnesses. The use of terriers or smaller dogs for traction is still forbidden.

OUT OF THE MAIL BAG

Street-lighting Waste and the Electric Power Shortage

THE technical press, many of the newspapers, and all of the government officials vitally concerned are stressing the fact that there is an impending power shortage in the United States. The solution proposed is the installation of additional generating capacity either through public finances or by means of private capital.

It is believed, however, that there are ways and means of increasing the supply of power by decreasing losses on transmission and distribution circuits. It is a natural thing for losses to take place on electrical circuits, but it is absolutely unnatural and abnormal where the losses equal or exceed 40 per cent of the power that is usefully employed. We have such a situation existing in series street-lighting circuits today.

A rate case was recently completed before the New York Public Service Commission which involved the reasonableness of the street-lighting rates in the village of Roslyn in Nassau county, Long Island. . . . During the course of the hearings one of the experts revealed the fact that 44 per cent of the total energy generated for street-lighting purposes in the territory served is lost, wasted, or otherwise unaccounted for.

To put this fearful fact in another way—of every 144 kilowatt hours that are generated at the power plant, only 100 kilowatt hours are converted into useful light—the other 44 kilowatt hours fall by the wayside en route from the power plant to the street lamps. This inefficiency exists only in series circuits.

The series street-lighting circuit today is a direct descendant or relic of the original lighting system of the early days when streets and roads were illuminated with carbon arc lights which were almost invariably connected in a series circuit. When incandescent lamps gradually replaced the carbon arc lamp it seemed desirable to retain as much of the original equipment as possible. As a result we have the present inefficient series street-lighting circuits in use today. To add to the unnatural condition, the cost of a series street-lighting transformer is much more expensive than that of the ordinary distribution transformer. Based on figures developed during the hearings, it was shown that a series street-lighting circuit required an investment of $96 per kilowatt for transformer capacity as compared with a cost of $12.20 per kilowatt if a multiple system was substituted. The reliability of the series circuit is, of course, considerably less than the reliability of an average multiple circuit. In the case of a wire breakage in a series circuit, the entire circuit is put out of use. A broken wire in the multiple circuit merely affects the lamp or lamps that are on that particular portion of the circuit.

Losses in multiple circuits hardly ever exceed 15 per cent to 18 per cent and it would seem incumbent upon the electrical industry, both the manufacturers and the utilities, that considerable thought be given to this situation of extremely high losses on series street-lighting circuits in use today. In some isolated instances multiple street-light circuits are in use but these constitute a relatively small percentage.

If electric power is to be rationed it would seem desirable to put at the top of the list, series street lighting ahead of all other classes of usage.

—L. MACKLER,
Consulting engineer, New York, N. Y.

Slogan: "It All Depends on Me"

I AM indebted to Miss Carolina Haslett, director of The [British] Electrical Association for Women, for a copy of PUBLIC UTILITIES FORTNIGHTLY, dated April 23rd.

I have read the article by Davis M. DeBard [of Stone & Webster Service Corporation] with very great interest, and was particularly delighted with his well-deserved compliments to our [British] utility services, for they have certainly done a magnificent job.

In the foreword to this article, he made reference to the acceptance by us all of a high sense of individual responsibility, and he coupled this thought with the motto, "It All Depends on Me."

Perhaps Mr. DeBard will be able to recall that our mutual friend, Austin Reed, about a

year ago told him of the efforts I had made to sponsor a campaign to develop a spirit of individual responsibility, and of the use I had made of the phrase, "It All Depends on Me." Since that time, the movement has grown to a considerable extent. More than 1,000 important companies have sponsored the campaign within their own organizations, and many of our finest associations have given it their support.

Recently the Electrical Development Association of Great Britain sponsored the idea throughout the electrical industry in this country; the Waterworks Association have decided to do the same within their particular sphere; while the Gas Association of Great Britain are at the present time making inquiries from me about the movement.

—ERIC C. COLSTON,
Perivale, Greenford, Middlesex.

The Flag above All

ACCORDING to your esteemed contemporary, *Advertising Age,* there were apparently very few publications which correctly displayed the flag of the United States on their covers during the July 4th period, when most of the magazine covers were so ornamented. Most of the magazines reproduced the flag *beneath* the banner line or name plate of their publications.

As a faithful reader of PUBLIC UTILITIES FORTNIGHTLY, I rejoice that the respectful reproduction of the flag on your July 2nd issue places you in the charmed circle. It was right there, as plain as can be—Old Glory floating free above the name plate.

The official War Department recommendation on proper display of the American star-spangled banner states: "When the flags of states or cities or pennants of societies are flown from the same halyard with the flag of the United States of America, the latter should always be at the peak."

By implication this would seem to include any trade insignia, crest, banner line, seal, name plate, coat of arms, or other designation identifying the name of a publication upon whose cover Old Glory is reproduced.

—LT. A. F. WECHSLER,
United States Army.

What Do Your Letters Cost?

THE over-all cost of an average letter, dictated by an average businessman to an average stenographer, is slightly over a half dollar. Such is the conclusion of a survey by Benjamin Haynes of the University of Tennessee and Harry T. Miller of TVA, results of which were recently published in pamphlet form (25 cents) by Gregg Publishing Company (New York). Haynes-Miller figure 20 cents plus for dictators' time, averaging ten minutes, and about the same amount for stenographers' cost of taking the dictation and transcribing it. The balance of nearly a dime goes for office supplies, stationery, postage, filing, use of equipment, and miscellaneous overhead. Haynes-Miller realize that a letter by a high-priced executive to his (naturally) high-priced secretary will cost much more than a letter of similar length by a $2,000-a-year salesman to a $25-a-week stenographer. The summary merely attempts to strike an average. Greater use of stenographic pools, "key" form letters, delegated correspondence routine, and generally cutting down the correspondence burden of the high-bracket "idea" men as much as possible are potential aids to the managerial problem of shaving this high price of business communications. It's sometimes much cheaper to use the telephone for local contacts.

Wire and Wireless Communication

WITHOUT recommendations of its own, the Board of War Communications on July 20th sent lists of critical occupations in the communications industries to the War Manpower Commission, Selective Service System, and United States Employment Service for whatever use these agencies deemed necessary.

Separate lists for each of the types of communications showed 23 classes of critical occupations for cable companies, 45 for telegraph concerns, 51 for telephone organizations, 48 in subdivisions of commercial radiocommunications services, and 15 in international short-wave broadcasting.

In standard broadcasting there were 6 classes of technical workers and 3 of skilled personnel in program departments.

* * * *

A SUBCOMMITTEE of the House Committee on Interstate and Foreign Commerce opened hearings on July 21st on the telegraph merger bill which has already been approved by the Senate. Fairly speedy action on the bill was expected as far as the authority for a domestic telegraph merger of Postal Telegraph and Western Union was concerned. But the Navy snagged the proposal to authorize an international telegraph merger by a recommendation that no action along this line be taken during the present emergency. It is not expected that this action of the Navy will bar passage of the permissive legislation, although it may result in some rewriting of the measure to hold up international telegraph merger plans.

A domestic telegraph monopoly in the United States is desirable, James Lawrence Fly, chairman of the Federal Communications Commission, testified on July 21st, declaring that displaced employees of merged companies could be absorbed in government communications services.

Mr. Fly also suggested, in an appearance before the House subcommittee, establishment of an American-owned and operated system of international communications, partially subsidized if necessary.

Merger of the Postal and Western Union Telegraph companies should be relatively easy now, Mr. Fly said, since employees displaced in the consolidation could find work in the Signal Corps or similar agencies.

"The need of the merger arises," he said, "from the poor financial condition of the companies, and particularly of Postal."

The Reconstruction Finance Corporation already has lent that concern $6,000,000. The company faces a second reorganization, the witness reported. Western Union, he said, had message earnings of $107,000,000 in 1941, compared with $22,400,000 for Postal.

Much of the discussion during the hearing centered upon the effect a domestic telegraph consolidation would have

upon those Canadian telegraph companies which now share business with either Postal or Western Union.

Brigadier General Frank E. Stoner, director of the Army communications service, said that the war effort would best be served by consolidation of the domestic telegraph companies at once.

A. N. WILLIAMS, president of the Western Union Telegraph Company, told the House subcommittee on July 22nd that under the proposed merger of Western Union and Postal Telegraph his company could utilize only about 4,750 out of Postal's 9,900 workers.

He suggested that of the 5,000 Postal employees not needed at once in the consolidating operation, 2,496 with less than two years' service should be released with severance pay under the Senate-approved bill now under consideration. The other 2,514 would, under the terms of the bill, he said, have to be given employment by Western Union even if it has no work for them to do.

Mr. Williams suggested that the clause in the bill calling for employment for five years of those workers who were employed on or before March 1, 1941, was too severe.

Edwin F. Chinlund, president of Postal Telegraph & Cable, testified that the proposed merger "would cure most of the present ills of the telegraph business." He told the committee that his company is losing approximately $300,000 a month, and that it now owes the Reconstruction Finance Corporation approximately $7,225,000.

Mr. Chinlund also expressed the opinion that the trend of events, including an increased acute shortage of employees, will probably result in government control or operation in a short time.

Joseph P. Selly, president of the American Communications Association (CIO), attacked the bill because in his opinion it would "assure wholesale discharges and union busting," and would "intensify the bottleneck in communications." Selly also attacked the adequacy of telegraph service, concerning which the FCC recently announced its forthcoming investigation.

However, this charge brought forth the remark by Chairman Bulwinkle (Democrat of North Carolina), of the House subcommittee, that the FCC was possibly "falling down on its job" in failing to see that the telegraph service is adequate and efficient. Representative Bulwinkle's remark came at the closing session of the 3-day hearing.

Subsequently, Chairman Fly of the FCC claimed that senior Naval officers, rather than the Navy Department as a whole, are responsible for the department's announced objection to the proposed merger of international telegraph facilities. Fly's charges were contained in a letter to Representative Bulwinkle. Fly recalled that representatives of the State, War, Navy, and Treasury departments, who are members of the Board of War Communications (of which Fly is chairman), favored the proposal.

* * * *

THE government began a double-barreled move on July 23rd against the tactics of James C. Petrillo, president of the American Federation of Musicians. Attorney General Biddle said that he had authorized the filing of an injunction suit under the antitrust laws to stop Mr. Petrillo from preventing his union's members from making transcriptions and recordings for radio and other nonprivate use.

On the other hand, the Federal Communications Commission started an investigation of the cancellation of the broadcast of the National High School Orchestra at Interlochen, Michigan, and also directed its staff to advise on procedure for a broader study into other musical problems as they affect radio broadcasting. FCC Chairman Fly sent identical letters to Mr. Petrillo and Niles Trammell, president of the National Broadcasting Company, asking all the details of the Interlochen incident.

The fate of the Petrillo order against "canned" music depends for the time being upon the attitude of the district court from which the injunction is

sought. If the injunction is granted it will stand until acted upon by higher courts and presumably at last the Supreme Court. If the district court refuses the injunction the government will have to appeal to the upper courts.

* * * *

RADIO programs may be rationed by the broadcasters. This won't happen tomorrow or the day after, but it is on the way. These changes in the normal radio day will be part of the broadcasting industry's struggle to increase the life span of vital parts now hard to get. In this struggle some smaller stations will fall by the wayside.

Because radio is the communications life line of the armed services, the demands for all types of radio equipment have shown tremendous increases. War radio needs forced manufacturers of civilian sets to cease production back in April.

Tubes are the No. 1 problem of the broadcasters. Condensers and transformers are also high on the list of hard-to-get replacements. No tubes, no broadcast. The heart of a radio transmitter, whether it is a small 5,000-watt unit or the monster 50,000-watt station, is its tubes. The big power-output tubes for the high-power transmitters cost as much as $1,650.

With so much of the war radio work now going on involving communication in the high frequencies it is only natural that the armed services' demand for radio tubes of all types is constantly increasing.

Generally speaking, the nation's 900 domestic broadcasting stations have sufficient supplies to meet requirements over the next year and a half. Unfortunately these supplies are not equally divided. The larger stations with better financial resources have been better able to build up inventories than the smaller stations. Thus, before that time many of the smaller stations will be forced off the air because they are unable to get vital parts.

Even an arrangement of pooling resources, which is currenty being discussed, would not be a great deal of help for the small station. Under such a plan engineers estimate that the stocks would last about a year. This arises from the fact that many of the tubes on hand at the high-powered stations would not fit the needs of the lower-powered stations.

* * * *

THE Southwestern Bell Telephone Company is all set to perfect a complete blackout in its offices and plant building in one and a half minutes, according to Frank X. Moore, Topeka district manager. Two test blackouts have been held so far, one in the daytime, the other at night, and the record of one and a half minutes was established.

In connection with the coming test with air-raid alarms, Moore asked that civilians not use their telephones from the time the alarm sounds until thirty minutes after the all-clear signal, thus leaving the equipment free to handle civilian defense calls.

Here is the way a telephone company blackout order is handled: When the alarm sounds the first-aid wardens, fire wardens, and floor wardens, under direction of the senior warden, proceed to carry out instructions which have previously been given. All lights in the plant are extinguished, except in the switchboard and dial equipment rooms, where the lights cannot be turned out. Blackout paper is placed over the windows in these rooms.

The signal is transmitted by bells and hummers for two minutes. The all-clear signal continues for one minute. Customers who are in the telephone office at the time the signal is given will be taken to the safety zone with employees.

* * * *

DAN F. Hurley, chief of the United States Conciliation Service at Cleveland, Ohio, reported to the National War Labor Board last month that the Ohio Bell Telephone Company and the National Federation of Telephone Workers, independent union, had agreed to submit to arbitration a dispute over the installation of wiring.

Except in cases of emergency war work, the employees have refused since June 22nd to make installations where part of the work was done under subcontract by members of the American Federation of Labor Electrical Workers Union.

F. M. Stevens, operating vice president of the company, said it had been a practice for years to contract with an electrical company for wire installations. Six or seven AFL men are used in this work, he said.

H. C. Mohr, business representative of the AFL union's Local 38, said he was not a party to the dispute, but asserted the Ohio Bell Telephone Company had had an agreement for eighteen years with the Telephone Construction Company, which hires AFL men, to install conduits and pull the wires through.

"If they want to fight, let them wait until the war is over and we'll give them a good one," said Mohr.

* * * *

THE name of the Tri-State Telephone & Telegraph Company would be officially changed to the Northwestern Bell Telephone Company, effective August 1st, it was announced recently by H. L. Dowd, district manager.

The Tri-State has been a subsidiary of the Northwestern since 1931, and has been operated under a common management with the parent concern. The change, Dowd said, merely means that management from now on will be in the name of the parent company.

The Tri-State properties included telephone systems serving 62 communities in southern Minnesota.

* * * *

MAYOR Frank J. Lausche, in a note to directors, on July 16th ordered all city employees to "strip telephone conversations of all pleasantries and collateral matters." Lest there be any misunderstanding, he added: "In other words, discuss your business, hang up, and give the other person a chance to use the line."

The mayor said he issued the order in connection with a national educational campaign necessitated because "congestion on long-distance calls is occurring and thus seriously hampering the Army and Navy departments."

* * * *

SEEKING all available equipment in the war against sea raiders, the Navy appealed last month to owners of radiotelephone outfits to offer their sets for sale or use aboard ships along the Atlantic coast.

The appeal was made to dealers as well as to amateur and other operators of radiotelephones. Officials of the Eastern Sea Frontier Command of the Navy, with headquarters at 90 Church street, New York, N. Y., urged owners of radio equipment to mail in full data, specifying voltage required to operate, output in watts, and other details.

The equipment will be bought outright by the Navy, provided the sets meet Navy requirements and the price offered is agreeable to the owners. General requirements are for sets of standard make, ranges of 2,000 to 3,000 kilocycles, with output of 12 watts or more.

Persons who previously had agreed to lend sets to the Navy at a fee of $1 were included automatically in the offer to buy, the Navy said.

* * * *

HIGHER preference ratings to enable communications companies to obtain copper necessary for operating construction, maintenance, and repair were granted on July 28th by the WPB Director General for Operations. The action was taken in amendments to orders P-129 and P-130.

P-129 raises the rating for telephone, telegraph, cable, and radio companies for copper from A-3 to A-1-j. Copper order M-9-a restricts deliveries of copper to A-1-k or higher and such action enables these communications companies to obtain materials in conformity with that order. P-130 gives a similar rating for deliveries of copper necessary for operating construction by telephone companies.

Financial News and Comment

By OWEN ELY

Power Shortage Bogey Again

THE Brookings Institution of Washington prepared an analysis of the electric power situation for the War Department in April, and this report has now been published (Pamphlet No. 40, 67 pages, 50 cents). It was prepared by Louis Marlio, a leading French economist who joined the institution staff in 1941. His pessimistic conclusions took the industry somewhat by surprise, since earlier similar forecasts by the FPC had apparently been ignored by WPB.

Dr. Marlio in his introduction points out that power production increased threefold in the first World War, and he thinks it will probably double in this war (1939-1945), despite the fact that 1939 output was ten times that of 1914. He bases this conclusion on the huge amount of power required to produce aluminum and magnesium, plus increasing demands of other munitions factories now under construction. Effective new sources of power, he states, cannot be created in less than two and one-half years, hence the urgent need for an expansion program.

Dr. Marlio sketches briefly the development of public and private generating capacity, the relative uses of hydro and steam power, etc. The differences between the utilization factor (kilowatt peak divided by capacity), load factor (kilowatt average divided by kilowatt peak), and plant factor (kilowatt average divided by kilowatt capacity) are discussed, and available figures charted for 1931-41.

Seasonal variations in consumption, peak load, interconnection, etc., are analyzed. A number of charts are presented showing the sources from which electricity is derived and the various uses made out of it, including the industrial war load. The latter is figured at 25,000,000,000 kilowatt hours in 1941—about 21 per cent of industrial consumption and 12 per cent of the gross supply.

DR. Marlio then analyzes the anticipated rapid growth in industrial war demand. He notes the disparity between the FPC estimate that 2.75 kilowatt hours are needed for every dollar expended by the government in war production, and a similar estimate of only .6 kilowatt hour made by President Kellogg of the EEI. The first estimate would boost annual war requirements to 150,000,000,000 kilowatt hours (corresponding to $55,000,000,000 war expenditures), while the second would be 33,000,000,000—only a moderate gain over 1941. He then proceeds to build up his own estimate, which exceeds that of FPC.

He estimates that the number of wage earners will increase 22 per cent, the length of the work week 13 per cent, and the hourly use of kilowatt hours by the wage earner 7.5 per cent, thus arriving at war requirements of 183,000,000,000 kilowatt hours in the peak year of 1944 or 1945. He added to this an additional 50,000,000,000 kilowatt hours for the electrometallurgical and electrochemical industries, which use electricity practically as a raw material. Adding nonindustrial requirements and line losses at the 1941 rate would boost the total to 326,000,000,000, or an increase of about 54 per cent over 1941.

He admits that some of the increased

war demands can be met by curtailment of nonindustrial demands and discusses the ways and means of bringing this about—by rationing, special taxes, prohibiting sale of bulbs of over 50 watts, etc.

Civilian industrial demand would also be reduced by the rearrangement of peak loads, reduction of irrigation, etc.

REGARDING war production he also discusses plant locations, interconnection, etc., but finds that various difficulties would prevent any very substantial savings. He also feels that operating reserves in the use of current have already been reduced to rather dangerous levels and that not much more can be expected from further drawing on reserves. Summarizing, he thinks that only about one-quarter of the 114,000,000,000 needed additional kilowatt hours can be met through economy and efficiency, and hence construction of new electric generating plants should begin at once.

Space is not available in this department to analyze the merits of Dr. Marlio's arguments in detail, but the following observations are offered:

(1) As pointed out by J. A. Krug, then chief of the power branch of WPB, the power outlook has been greatly improved by the heavy recent rainfalls, which have built up the reservoirs behind the hydro dams; extensive interconnections and adjustments for transmission of power have also been developed. While it was necessary to ration power in the South last year in order to produce aluminum, this was because of a record drought, which condition no longer prevails.

(2) While local deficiencies may occur, rationing of nonessential uses is expected to relieve these bottlenecks.

(3) The use of fluorescent lighting in factories should lead to great economies, a factor of which Dr. Marlio makes no note.

(4) His discussion of power reserves does not seem fully convincing. The possibility remains that such reserves can be further drawn on, temporarily at least, despite the fact that they are smaller than in former years.

(5) In addition to the statistical power reserves discussed by Dr. Marlio, there are some hidden reserves which he does not take into account. Thus, many generators can be temporarily pushed beyond their rated capacity to take care of peak loads without apparently harmful effects.

(6) Finally, his estimates of further increases in the war program seem excessive. We are currently spending at the rate of nearly $50,000,000,000 a year, and $72,000,000,000 is considered the practicable limit. Moreover, much of the increase will be at the expense of nonessential production. Even this program is now subject to doubt because of the lack of raw materials, as indicated by the recent curtailment of shipbuilding yard construction. There is a strong possibility that even before we get to the suggested peak of war production in 1944 or 1945, a number of other industrial power users may have to cut down or drop out because of the increasing shortages of critical raw materials.

Corporation Financing at Low Ebb

READERS of *The New York Times* were startled, perhaps, to see a headline several weeks ago: "New Issues Soar to $2,965,000,000—Securities Offered for Cash in May the Highest Total since the World War." The explanation, of course, was that United States government issues amounted to 95 per cent of the total, in the SEC compilation. It is a fair question whether, due to the highly abnormal conditions now prevailing in the emission of government bonds, the SEC should revise the compilation so as to exclude Federal issues, or at least state them separately.

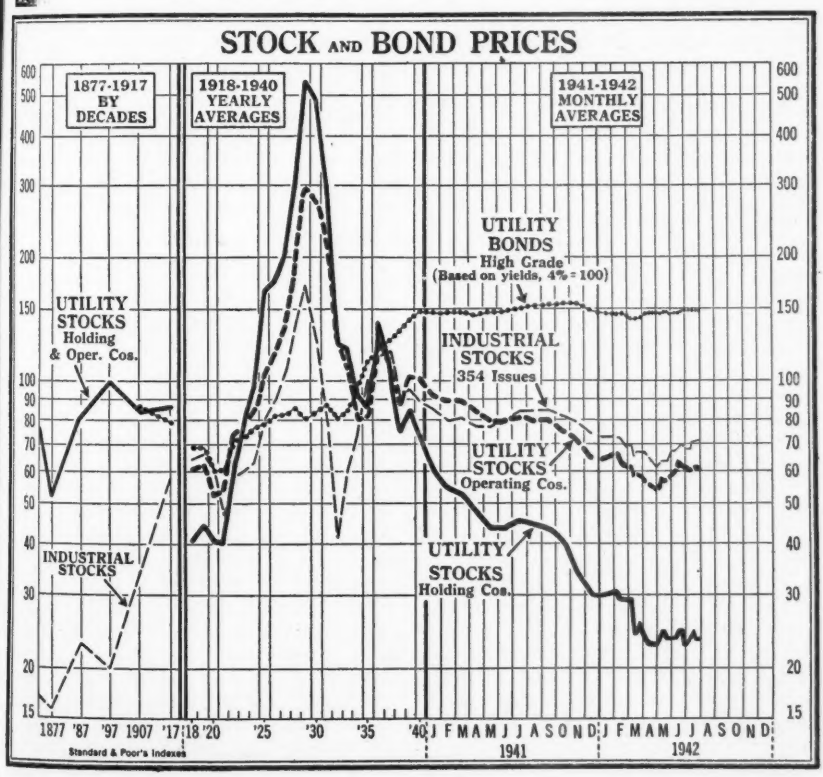
Seasonal lethargy, combined with other retarding influences, has recently reduced the amount of new corporate

and municipal financing to a mere trickle. In the week ended July 24th offerings consisted of two municipals and one industrial issue, the total amounting to less than $6,000,000, compared with $27,000,000 in the previous week and $140,000,000 a year ago. No utility offerings of importance have occurred recently, but some spadework is being done on a few proposed issues, such as the $32,500,000 Southwestern Public Service financing, sponsored by Dillon, Read & Co.

North Boston Lighting is seeking SEC authority to borrow $13,000,000 from the banks at 2½ per cent for five years, the proceeds to be used to retire the secured 3½ per cent notes due 1947. It seems surprising that this refunding method has not been resorted to by more companies, since potential interest savings are substantial, although of course the serial retirements are somewhat of a drain on future earnings.

The Traction Companies

THANKS to accelerating defense activities, the traction industry—the old-fashioned trolleys as well as the modern bus—is having a strong comeback in many sections of the country. There is no longer any widespread interest in the securities of the industry, since many local units are comingled with other forms of utility service under the control of large holding companies, and other important systems are now municipally owned or in process of reorganiza-



tion. However, because of the extraordinary situation now prevailing in the industry, it may be of interest to review some of these companies briefly.

St. Louis Public Service Company

(*First of a series of brief descriptions of traction companies.*)

THIS company operates street cars and busses in St. Louis and adjacent municipalities, the territory served being about 110 square miles with a population of around 1,000,000. This territory is especially active in defense work.

In 1939, following reorganization, an improvement program was initiated — about $9,000,000 being expended in the last three years—which has permitted the company to reduce running time and maintenance costs. A total of 776 cars and 924 busses are operated, over half of the latter being Diesel-powered. While a 10-cent fare is charged, transfers are given, various concessions made to shoppers, soldiers, and children, and the city receives a fixed percentage of gross income.

While National City Lines (a midwestern traction holding company) has a large interest in the company, the directorate and management are local. National City is said to hold potential control through its ownership of a substantial amount of bonds and notes, convertible into class A shares.

Passenger revenues last year amounted to $15,416,924, a gain of 14 per cent over the previous year; the first half of 1942 showed a further gain of 30 per cent. Despite reorganization, fixed interest was only partially earned in 1939 and 1940, but in 1941 gross income more than tripled, providing 115 per cent coverage for all interest including income bonds and notes, and leaving $3.14 per share on the comparatively small issue of class A stock. In the first half of 1942, $12.40 per share was earned on the A stock, which is currently selling over the counter around 8. (Share earnings would be subject to considerable dilution if National City Lines should convert its holdings of bonds and notes into stock.) The company will not be subject to excess profits taxes, it is reported.

Recent earnings have strengthened the cash position which (excluding special cash deposits) now exceeds current liabilities.

The first mortgage 5s of 1959 are currently selling on the New York Stock Exchange around 87 to yield about 5.73 per cent, and the noncumulative income 4s of 1964 (convertible into 60 shares of A stock) are quoted over the counter around 45.

International Hydro-Electric Ordered to Dissolve

INTERNATIONAL Hydro-Electric, which controls a $480,000,000 system, has been ordered by the SEC to dissolve. This result had long been anticipated. The company had already canceled its common stock and there are indications that the class A and preferred stocks will receive little, if any, of the assets in eventual wind-up. The debenture 6s of 1944, currently around 27, will receive the bulk of the assets. These consist principally of common stock in Gatineau Power, an important Canadian hydroelectric company, and in two smaller hydro properties in New England—System Properties, Inc., and Hudson River Power Corporation. These two companies furnish a considerable amount of power to International Paper, which formerly controlled International Hydro. The system also controls New England Power Association, but the equity interest in this important system is probably of little, if any, value since it also is overcapitalized and top-heavy. New England Power controls, directly or indirectly, electric and gas companies in Massachusetts, Rhode Island, Connecticut, Vermont, and New Hampshire.

International Hydro's income in recent years has been considerably reduced by the decreased returns from Gatineau, due to heavier income taxes and the 15 per

cent dividend withholding tax in Canada. Full interest has been paid to date but it seems likely that some reduction in payments may be made next October, since the company has been drawing on cash over the past year or so. Some income is received from the hydro properties, but nothing has been obtained for some years from the New England Power system.

THE SEC pointed out in its recent dissolution order that the top company is greatly overcapitalized. The commission also pointed out that with only six employees, International is hardly in a position to be of any service to subsidiaries.

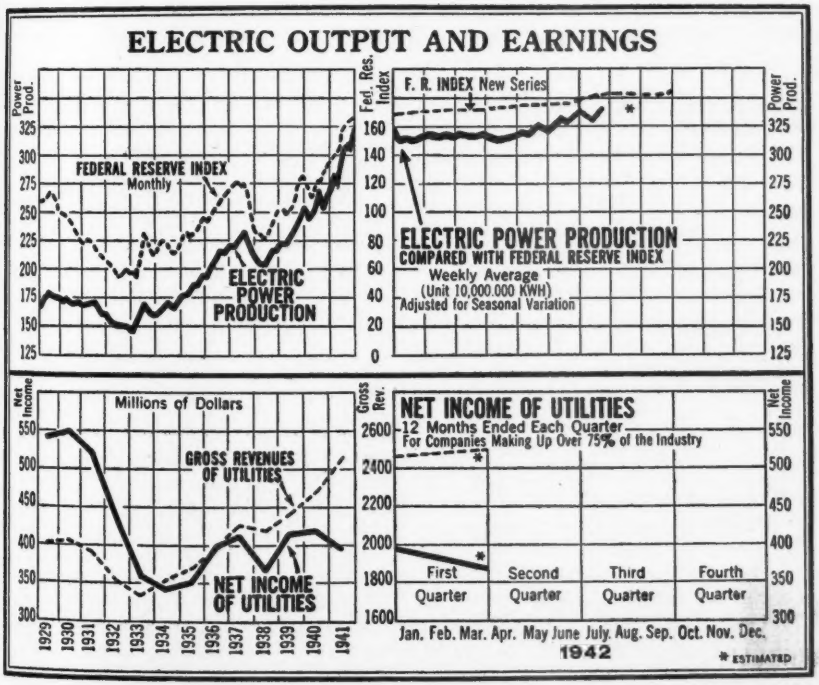
President Moore has indicated that a plan for distributing assets to security holders will be forthcoming, probably in the near future. However, the plan will provide for such distribution only when "such assets are in suitable form for distribution." This apparently means that the New England and New York properties will be simplified and consolidated, a program which may take some time. Pending completion of this program, the debenture bonds which mature in 1944 might be extended or placed on an income basis, it was hinted.

*

Community Power to Reshuffle And Refinance Properties

COMMUNITY Power and General Public Utilities, Inc., are to be merged into Southwestern Public Service. The plan has already received the blessing of the SEC (subject to further check on some details) and is to be ratified by stockholders at a special meeting on August 17th.

At present Community owns about a 60 per cent interest in General Public Utilities which in turn owns all the stock



of Southwestern. The latter is to issue one share of common for each share of Community common and one and a half shares for each of General. General's $5 preferred stock is to be redeemed. Southwestern will assume all the debts of the two other companies (to be refunded in connection with the new financing). In connection with the program, Gulf Public Service, $8,000,000 system subsidiary, will also be recapitalized and certain properties will be transferred.

Another feature of the plan is the proposal that Southwestern buy all the securities of several subsidiaries of Continental Gas & Electric for $7,250,000; the concerns will be liquidated and the properties transferred to Southwestern. The companies included are Panhandle Power & Light, Cimarron Utilities, and Guymon Gas. On the other hand, Continental Gas will buy from Community the southeastern Kansas properties of Kansas Utilities company.

This is one of the few instances in which one holding company system has exchanged properties with another. Some years ago it was thought that a great deal of "horse trading" between systems would occur in connection with the integration program, but apparently the utilities have been unable to "get together" on very many deals. National Power & Light recently revealed that Commonwealth & Southern's offer for Birmingham Electric seemed too low.

Southwestern will offer $18,500,000 first and collateral trust bonds due in 1967 or 1972 (3½ to 4 per cent), $5,500,000 serial notes (2½ to 3½ per cent), and $8,500,000 of 6 or 6½ per cent preferred stock.

SEC in Coöperative Mood

SEC officials headed by Chairman Purcell have recently been meeting with representatives of several stock exchanges and securities organizations. At the meeting on August 17th recommendations on seven subjects will be discussed:

1. Activities in assistance of the war.
2. Expenses of operation.
3. Uniform reporting to Federal and state agencies and others.
4. Standards of corporate accounting.
5. General questions relating to trading practices.
6. Coöperation between exchanges.
7. Assistance by industry in effecting necessary exchanges and allocations of public utility holding company systems' properties and securities to accomplish the ends of the Holding Company Act.

The last item is of special interest. The commission is now showing a much more conciliatory attitude toward Wall Street than in the past. The efforts by former chairmen or SEC members to disparage the financial community in New York city and the attempts to transfer as much financing as possible to "the sticks" have apparently been abandoned. This changed attitude may be traceable in part to the success of the commission's program for competitive bidding, though some of the larger New York firms have continued to dominate the field under the new system as in the past, and experiments with local sponsorship of new issues, such as Louisville Gas & Electric, have proved unsuccessful.

Since the problem of "effecting necessary exchanges and allocations" of utility properties is on the agenda, it seems rather surprising that no representative of the utility industry attended the first meeting. It would seem worth while to invite such a representative to later meetings when the utility problem comes up for specific discussion.

While the commission formerly looked askance at the employment of brokerage houses to expedite utility exchange offers, they now seem willing to make concessions in this respect. Thus National Power & Light a few weeks ago was permitted to employ a group of leading houses to aid it in the exchange of its preferred stock for Houston Lighting & Power common. A price concession has recently been arranged to help the exchange.

What Others Think

TVA Fears Political Trouble

DAVID E. Lilienthal, TVA chairman, has issued a warning against permitting politics to take control of public power projects, and after recalling that a recent "most powerful and determined kind of attack in Washington" had been turned back, expressed the view that such attacks would be made again.

He spoke at a luncheon of the Kiwanis club at Knoxville on July 9th. The meeting was attended by city and county officials and others. Lilienthal credited the protest of a strong group of Tennessee Congressmen, including Representative John Jennings, Jr., who sat in his audience, as well as the people of the Tennessee valley with assisting to turn back the attack. Lilienthal continued:

> They understood the issue and vigorously and unmistakably made known their views. It is significant that it was the voluntary organizations of citizens in the chambers of commerce, civic clubs, and business and professional men not usually participating in public matters who were most active in expressing themselves.
>
> The TVA directors are sufficiently apprised of the facts of life to know this is not the last effort, as indeed it has not been the first, to change the very foundations upon which rest the work of this organization and with it the prospects for this region. But for the moment the first front—the front at Washington—has been held.

LILIENTHAL warned that when "politics walks in the door of management, business principles are kicked out the window." He stated:

> But the people of the valley must be on guard against the opening of a second front in the battle to make this region the spoils of a narrow and old-fashioned kind of politics. We are deeply distressed and concerned by indications of an effort to infiltrate politics into the municipalities and coöperatives distributing TVA power.
>
> If this same movement that sought to put the TVA itself into politics should now be successful in pushing local distribution systems into politics, if it should be successful in making the distribution of electricity a political rather than a business function, then this region will suffer grievous injury.
>
> The efficiency and low cost of operation that mark the record here in Knoxville and in almost all communities of the Tennessee valley to date depend upon business management. Political management will boost those costs; that always happens. Political management will inevitably lead to increased rates for electricity here. Political management will discourage and perhaps reverse the trend of increased commercial development of this region. Businessmen have learned to distrust politically managed enterprises and to distrust communities in which political and not business management is the rule in public service.

Lilienthal added that "Your eternal vigilance is the price of low-cost electricity. The key to the future of this region will be the 18,000,000,000 kilowatt hours of electricity a year that will be here available in the future."

He said this was the second largest output of electricity in the western hemisphere—two-thirds as much electricity in the Tennessee valley as all the utilities in the nation produced in 1914. The TVA has invested in power production and transmission facilities a total of more than $350,000,000, he added, while municipalities and coöperatives distributing this power have an investment of an additional $100,000,000.

Power produced by the Tennessee river system in the twelve months ending last May 31st was sold for $44,000,000 and that for the present fiscal year will have a value of more than $56,000,000, he said.

CHAIRMAN Lilienthal's denunciation of political maneuvering against the TVA did not go unanswered. In a Democratic campaign rally at Chatta-

nooga on July 17th, U. S. Senator Tom Stewart defended his recent activity and legislation affecting TVA. He said:

> I've rendered every aid I know how to render to the TVA, and I want to see it expanded to serve further this section and the nation. There may have been some criticism of some of the policies of the TVA and of some of its officials who would like to run it as a private power company.
>
> The TVA is being dictated by a man named Lilienthal who thinks he is all powerful. The other directors don't count.
>
> I'm a supporter of the TVA and a lot more interested in its development than he is. He said the other day the TVA has won on the Washington front and warned people against the establishment of another "front" in the state.
>
> I take that as a personal affront. I know what he meant—he meant "beat Tom Stewart." He says the TVA is not in politics. But if that isn't politics, what is it?

Stewart termed himself a "consistent supporter" of President Roosevelt's foreign policy and said he recently introduced a bill to set up sectional Army and Navy aviation schools to provide emphasis on air power "which we must have."

A Gas Industry Outline of Occupational Deferment

A COMMITTEE of the American Gas Association, operating under the chairmanship of James D. Dingwell, Jr., has recently issued a report on occupational deferment procedure, which was so well constructed as to earn the specific commendation of Brigadier General Lewis B. Hershey, director of the Selective Service System. Writing to the American Gas Association several weeks ago, General Hershey stated:

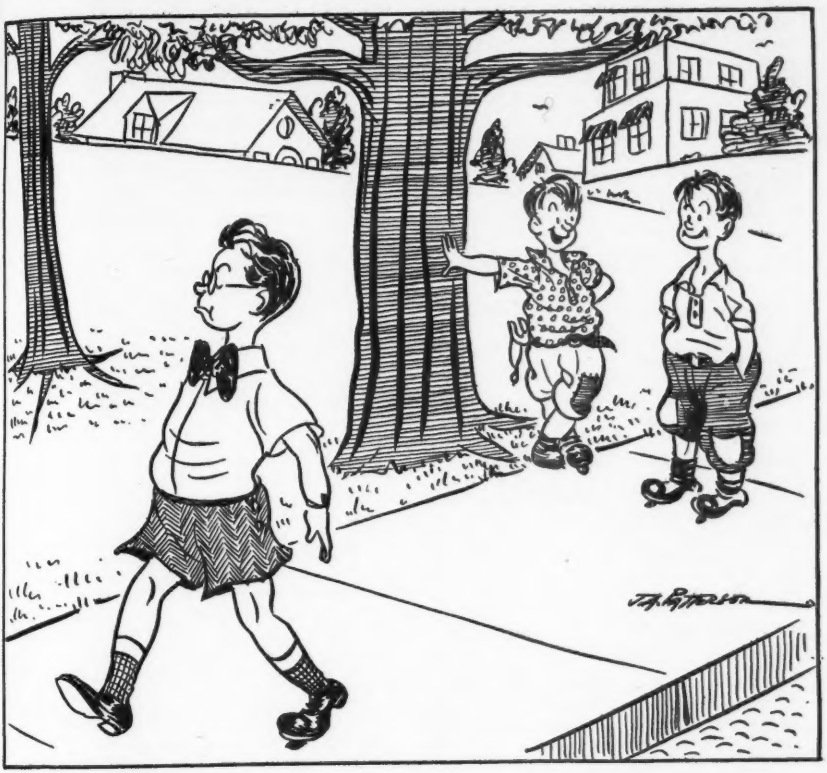
> I desire to compliment you upon the material and the spirit in which the subject is handled. This type of information being disseminated by industrial and service groups is very helpful to the operation of the Selective Service System and I believe it will go far toward accomplishing coöperation between employers and the agencies of our system and will result in more accurate classification.

This report of the AGA Committee on Personnel Practices is entitled "The ABC of Occupational Deferment Procedure." Under "A," the report outlines the purpose of the procedure as follows:

> 1. *To retain necessary employees until your company can obtain or train replacements for them.*
>
> Utilities generally have been slow to ask for deferments for their key men. The draft law is a *selective* service law and it is the duty of those charged with its administration to see that necessary men in essential industries are not taken from their jobs, thus wasting valuable experience and knowledge. This requires the coöperation of employers.
>
> 2. *To establish coördination and mutual understanding between the draft board and the company, so that each can function more effectively in relation to the other.*
>
> Without systematic procedure, not only your company but your local boards are operating at a disadvantage. Local boards have been obliged to waste valuable time in reconsidering men they have already classified for military service because they did not know at the time of classification that occupational deferment would be asked.

UNDER "B," the report tells company members of the American Gas Association how they can best follow the occupational deferment procedure. The report states under this head:

> 1. *Survey your entire male personnel* and, after careful consideration of each case, select—
>
> those production and distribution department employees within the age limits for active military service who are essential to safe and continuous operation *and* who cannot be replaced at present without serious risk to the public, which risk will be greatly increased in the event of an emergency; and
>
> those supervisory and administrative employees within the age limits for active military service who are vital to essential company operations *and* who, in your opinion, cannot be replaced at present without substantially weakening the organization. (Employees in the above categories will be considered by local boards in accordance with official definitions of "critical occupations" and "necessary man," as defined in Selective Service System Memorandum I-405, dated



"WELLINGTON OTTERLY SMYTH THE THIRD HAS BEEN REGISTERED FOR GROTON, CLASS OF FORTY-EIGHT; YALE, CLASS OF FIFTY-TWO; AND A PRIVATE TELEPHONE EXTENSION AFTER THE DURATION"

March 16, 1942, obtainable from your state headquarters.)

2. Then prepare either an occupational or a departmental analysis of total male employees, those for whom deferment will be asked, and those for whom it will not (disregarding the fact that many will be deferred for other than occupational reasons). Since many gas industry job titles mean little to those on the outside, perhaps a departmental analysis will be more helpful to the local board.

3. The next step is to get current information about the draft status of those employees for whom deferment will be asked. One way of doing this is to send each such person a brief information slip requesting that he fill in the number of his local board, his present classification (if any), marital status, etc.

Not only does this obtain needed information which you may not already have, but it lets such employees know how they stand with respect to occupational deferment request by the company. This may prevent your head gas maker, for example, from trying to get a commission in the Coast Guard.

4. While awaiting the return of the information slips, prepare the first draft of a letter to each local board, completely outlining the company's problems with respect to war-time personnel requirements and its responsibilities in serving war industries and essential civilian needs.

5. After the information slips are in, separate those which show that the employee has received a Selective Service questionnaire from those on which the employee states that he has not. (If any employee reports that he has been classified but that he has not received a questionnaire, it means

that he has forgotten the latter so you would automatically put him in the questionnaire group.) For each such person already classified or who has already received the Selective Service questionnaire, an official request for occupational deferment (Form 42A—obtainable from your local Selective Service headquarters or boards) should be prepared and filed by your company just as soon as possible, beginning with those in Class 1-A. It will probably be advisable to attach a supplementary statement to each deferment form, giving added details of the employee's occupational background and the relationship of his duties to essential war or civilian needs.

Also prepare a short letter on each such person, to accompany your general letter advising the local board that deferment papers are being prepared.

For those essential employees who have not yet received Selective Service questionnaires, prepare a special letter . . . Such employees should be instructed to notify you when they receive their questionnaires so that an official request for occupational deferment may be prepared and filed *at that time*—if the employee is still considered "necessary."

6. Take a sample of each letter, the statistical analysis, and a "sample set" (Form 42A, filled out for one of your employees, with supplementary statement attached) to the occupational deferment classification division of your *state* Selective Service headquarters.

In that division you will be referred to the individual most familiar with occupational deferment policy and who is in a position to properly advise both you and your local boards on such matters. If you don't already know, find out from your local Selective Service headquarters where the state occupational deferment classification division is located. Even though they may be in the other end of the state, it would be worth while to discuss your whole procedure with them in person. They will be glad to coöperate with you.

7. After you have received the general approval of the individual to whom you are referred in the state occupational deferment classification division, submit your letters to your local boards—to be followed by the appropriate individual requests as soon as each such set (Form 42A, with supplementary statement and a short letter referring the board to the facts set forth in your general letter) can be completed.

You will thereby have established a system which—while not guaranteed to gain deferment for every employee for whom it is asked—will make possible a high degree of coöperation within the spirit of the Selective Service Act.

Under "C," the report includes "a word to the wise." This is an admonition to utility companies to keep faith. It points out that local boards must be convinced that utility companies are doing everything possible to recruit and train replacements. Otherwise, boards will lose confidence in utility organizations and the latter will not have much success in obtaining needed deferments. The report continued:

> Appear in person before the local boards whenever you think that to do so will give them a better understanding of your reasons for requesting the deferment of any employee. If a necessary employee is registered with an out-of-town board and you fear that they may not have obtained an adequate knowledge of your operating problems from your written communications, ask the president or the personnel manager of *their* local gas company to appear before them in your behalf. Or you could ask the occupational deferment classification division at your state headquarters to contact the corresponding organization in their state in your behalf.
>
> Look upon all deferments as being for six months only—that's how the Selective Service System regards them (even though in some few cases it may be possible to obtain an extension). *All* men within the military draft age who are not physically disqualified should be regarded as *likely* to be lost sooner or later.
>
> Let your policy be to ask only for necessary men—*but hold out for those men!* Don't fail to *appeal* any case in which, in your judgment, the local board has made an error. Your government recognizes this possibility and so does the Selective Service System, and they have set up machinery for this purpose.

The report concludes with a warning against postponing action. It points out that if the procedural machinery outlined is promptly and properly set up it will immediately reveal "where the emphasis should be placed in training replacements." It will minimize the probability of public criticism of the type of utility service rendered during an emergency. It will put all of the facts in the hands of the local board so that it cannot suspect the utility company of "crying wolf."

FURTHERMORE, a system which coördinates deferment-request policy within the company places that company in a better position to modify its procedure

whenever it may be necessary to do so. Above all, the report emphasized the danger of delay. Every day lost in establishing such a system means loss of opportunity for effective control of the occupational deferment situation, duplication of effort, confusion, and misunderstanding—none of which are in keeping with the gas industry's pledge of all-out assistance to the government.

The report includes six exhibits of sample data mentioned in its procedural outline:

Departmental analysis, personnel information slips, letter of information to the local draft board, supplemental affidavit to support deferment claim, and notifications to the board that a deferment claim for a particular employee will be made.

Price Fixing Has a Long Tradition

In the current number of the Chicago *Bar Record* Urban Lavery writes of price-fixing laws and wage freezing in a way that takes the curse of modernism off OPA. While nearly everybody is familiar with the fact that our ancestors were just as much addicted to "there ought to be a law" as ourselves, the extreme regimentation of trade in feudal times is little appreciated.

Prior to the Tudor dynasty in Britain, local customs, the manorial courts, the rules of guilds and statutes of Parliament regulated everything. Our Blue Eagle would have appeared as a wren beside an ostrich to the folk 'way back when.

Only a half century after Magna Charta asserted the rights of persons—that is, the rights of the "right sort of people"—the "Assize of Bread and Ale" was enacted under Henry III. This ancient law regulated the profits of bakers and restricted them to 4 pence per quarter of wheat plus the bran and "two loaves for advantage."

The bakers were also given allowances for extra labor employed and for "salt and candlelight." Prices of ale were also fixed, a custom that was live law in Illinois when Lincoln and Berry took out their license for a grocery in New Salem.

Wage fixing really got to going good with the Statute of Laborers in 1351. This law attempted to hold down wages to the rates prevailing before the Black Death of 1346, which killed so many people that there was a sellers' market for labor compared to which our "silk-shirt" labor market of 1919 was tame.

Long before Henry's time, statutes were passed to stop the migration of labor from one parish to another, but nevertheless England was overrun by Okies, a condition that led Good Queen Bess a little later to establish that jolly old workhouse that has been there ever since.

Mr. Henderson has ample and venerable sanction at common law for whatever he may do for us and to us. All English law prior to 1607 is still law here unless it has been specially repealed or is acknowledged to be archaic by the courts.

Many sumptuary laws are in the old books. Those statutes would justify banning luxuries to an extent no one has dreamed of in connection with our war program.

Some of those laws, by the way, were designed for the protection of men. One of the statutes provides for penalties against any female enticing any of his Majesty's subjects into matrimony by the use of paint, powders, false hair, and a long list of devices which only a beauty operator probably could identify. This statute provided for a fine of £25 to be assessed by a justice of the peace against any convicted glamorite — but no conviction is on record.

Of course, regulation of public utility rates—which is the most specialized form of price fixing—has a relatively briefer history. In the celebrated case of

Munn *v.* Illinois, 94 US 13, in which price regulation was constitutionally established in the United States, Chief Justice Waite referred to the distinction made between ordinary private business which is not subject to regulation and private business "affected with a public interest." This distinction was made by Lord Chief Justice Hale more than two hundred years ago in his treatise De Portibus Maris (1 Harg L Tr, 78).

It was under Lord Hale's doctrine of "business affected with public interest" that the King of England formerly regulated the price or rate charged for the ferrying of passengers and property across the Thames river. Ferryboats today are generally considered public utilities, but there were other businesses which were regulated in olden times under Lord Hale's doctrine which are now considered private business—or were until the OPA came along. On the other hand, former private enterprises are constantly being considered new subjects for government regulation, such as dairy farming and ice business.

ADDED to this there are new occupations not known in common law such as radiocommunication and aircraft transportation that are already coming within the scope of public regulation. During the latter half of the eighteenth century, for example, in England when surgeons were scarce a man of medicine was considered a public servant and was subject to certain statutory restrictions and obligations. Here is a partial list of other occupations that were regulated by the English Parliament: bakers, brewers, cab drivers, ferrymen, innkeepers, millers, tailors, victualers, wharfingers. Walton H. Hamilton, in a note in 39 *Yale Law Journal* (1930), pages 1089, 1094, entitled "Affectations with a Public Interest," says that "in Lord Hale's time—all activities comprehended under what we call business was public and all of it subject to price control."

An Oklahoma Utility Explains AVA Legislation

EVER since the Federal Trade Commission investigation, public utility organizations have been twice shy about taking sides or, for that matter, taking any notice of political issues. There have been exceptions, of course. And in at least one instance a utility organization, perceiving that a public ownership proposal threatened the life of its property, openly and honestly went out and spent money on a political campaign to beat the measure. Furthermore, it succeeded.

But that is the exception rather than the rule. Most utility organizations prefer to do nothing and say nothing. And yet when proposed legislation threatens the investment of a utility's security holders and the jobs of its employees, does it not have a duty and a responsibility at least to call the situation to the attention of the interested parties? This is a delicate question.

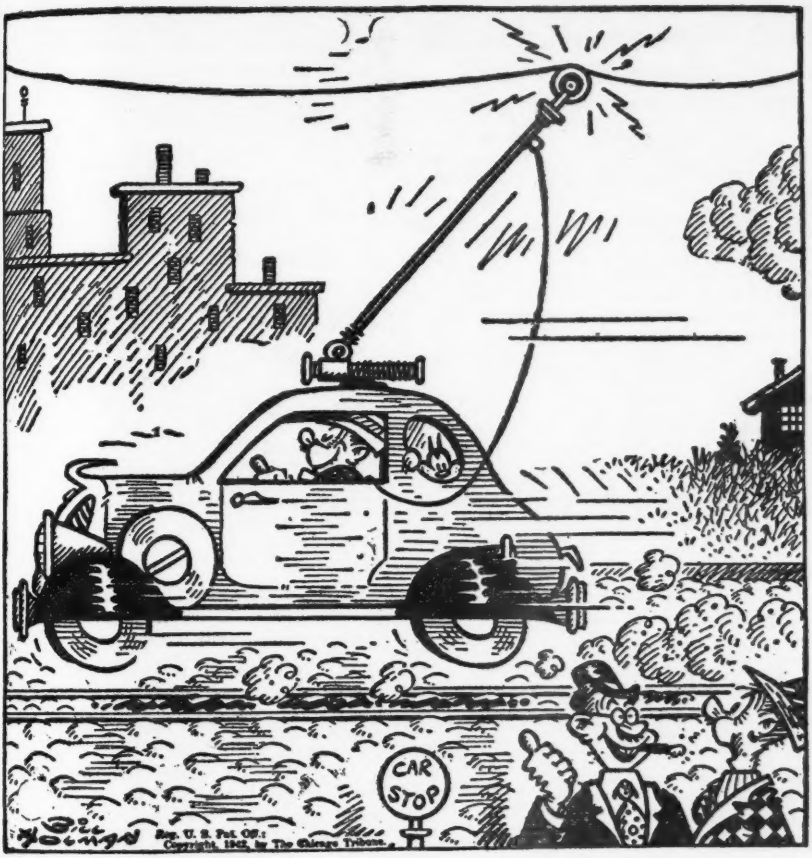
Recently, the Southwestern Light & Power Company undertook a rather novel solution. It conceived that it was its duty to explain the pending Arkansas Valley Authority bill, introduced by Representative Ellis, January 26, 1942 (HR 6464), to its employees and to all of the newspapers which it serves, so it did so with the following preamble:

A Clear-cut Issue

Is presented by the amended AVA Bill No. 6464, introduced in the House January 26, 1942, by Representative Ellis of Arkansas. We desire to present this issue from the bill itself and without any "soft-soaping," "ballyhoo," or extravagant words, but in plain, simple, and concise language; nor, are we here debating the merits or demerits of the issue. We are just stating the issue.

The real issue presented by the bill is whether or not the entire electric business, not just that connected with water power, shall be governmentally owned and politically managed.

THIS introduction was part of a 9-page statement which explained



The Chicago Tribune

"THE GAS RATIONING WON'T BOTHER OSCAR UNTIL THE TROLLEY COMPANY GETS WISE TO HIM"

the origin of the bill and the policy set forth in it, with liberally quoted excerpts from the bill itself. Here is a sample of the treatment contained in the company's pamphlet:

Suppose the Authority Should Operate At a Profit, Then What?

The authority's indebtedness to the Treasury, determined as provided in this section, shall be reduced by the amount of any payments made by the authority to the Treasury for the purpose of repaying the *said investment of the United States.* Page 24.

Here is some very positive evidence this is a governmental program, and nothing else.

But, Suppose the Authority Should Operate at a Loss?

In the event that the authority shall be unable to pay upon demand, when due, the principal of or interest on such notes, bonds, or other obligations, *the Secretary of the Treasury shall pay the amount due,* which amount is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders thereof so paid. Page 22.

In short, the United States makes the investment and stands the loss if there is one.

There is another interesting excerpt from the company's literature:

What about Private Utility Systems?

Now we come to the crux of the issue we are presenting. Please read this carefully from § 10(a):

> The authority may acquire *in the name of the United States* by purchase, lease, condemnation, or donation, electric utility systems operating in the Arkansas valley region and properties and assets reasonably incidental thereto or parts of such systems, and other generating, transmission, or distribution facilities, the acquisition of which in the judgment of the board will aid in the operation of the government's electrical facilities in the region and will facilitate the development of appropriate marketing outlets for the electric energy produced at the government dam projects or by other electrical facilities now under construction or hereafter constructed by the United States in the region: Provided, That condemnation proceedings shall not be instituted pursuant to this section against public bodies or coöperatives.

This section clearly provides for the purchase of the private utility systems operating within the area. The government is so determined to get them that if it cannot force the utilities to sell through economic warfare private utility systems may be *condemned.*

We have already shown that the authority may issue its notes, bonds, or other obligations up to $250,000,000. We do not know the investments of the private utilities operating within the region, but from what we know of those in Oklahoma it is safe to say the $250,000,000 will much more than buy the private utility systems operated in this region.

There you have it, clear as crystal. The bill puts the government into the electric business, independent of any water-power generating facilities, and provides the fund with which to do it.

THE pamphlet goes on to explain by reference to the act that private utility systems are to be operated directly by the government. If the AVA bill is passed, distribution facilities may be sold to municipalities or coöperatives, but to no one else. Even in such cases the Federal government holds some strings on them, because the AVA is directed to take a hand in the acquisition, construction, improvement, and operation of the electric facilities of public bodies and coöperatives. The government fixes the rates at which such agencies may sell, which in itself is virtually complete economic control.

The company's statement, signed by S. I. McElhoes, vice president of Southwestern Light & Power Company, concludes with this summary:

> There is the picture. Extended discussion cannot make it any clearer. The plan, scheme, or program is to take a private enterprise developed and managed by private citizens and make it completely governmentally owned and politically managed.
>
> Those who believe making private enterprises governmentally owned and politically managed is a good thing should support this bill. Those who believe making private enterprises governmentally owned and politically controlled is a bad thing should oppose this bill.

Thus we have a fair statement of a pending bill by a party which has an admitted interest in its defeat. But it is a statement that could hardly be construed as either critical or commendatory. It is a simple exposition of the facts which neither opponent nor advocate of the bill could question. This is hardly propaganda in the usual sense of that term. In another way, it might be the best propaganda of all—letting the facts speak for themselves.

¶ "THE *Federal government has been as ruthless in destroying aquatic values as the rankest private corporation could possibly be. Some of our government planners think Utopia would be here if they could just harness every stream in the country for cheap water power.*"

—KENNETH A. REID,
Executive secretary, Izaak Walton League of America.

The March of Events

Electric Pool Adequate

J. A. KRUG, former chief, power branch of the War Production Board, expressed confidence recently that war production would not be crippled by a shortage of electric power. "We have sufficient electric power," he said, "to meet all the requirements of war production and for essential civilian needs, if used wisely—as far as we can see ahead."

He emphasized, however, that some local shortages probably would occur, necessitating curtailment of nonessential consumption.

Mr. Krug has been promoted to be Deputy Director General for Priorities Control, leaving the power branch under the acting direction of Herbert Marks, counsel of the branch.

The improved power outlook was attributed to rains that have built up the reservoirs behind the great hydro dams, to the huge generator production program, and to extensive interconnections and adjustments.

Krug's statement followed the prediction by the Brookings Institution of an eventual power shortage "sufficient to impede the war production effort" unless "conservation and more effective power utilization is undertaken in the immediate future." (See page 237.)

Declares War on AFL-CIO

REPRESENTATIVES of 30 independent utility unions met in Cincinnati, Ohio, on July 17th to form a national organization. George L. Mueller, director of the 2-day meeting, declared "Our purpose is to form an organization to knock the CIO and AFL out of the electric utilities employees' group."

Mueller, president of the independent association of employees of the Duquesne Light Company of Pittsburgh, said the unions represented 100,000 or more utility workers.

WPB Curtails Use of Copper

THE War Production Board recently approved new curbs on the use of copper which will curtail operations of the Rural Electrification Administration.

WPB officials, who declined to be quoted by name, would not reveal the exact nature of the pending order, but confirmed that it would remove from the REA's hands most of the agency's already curtailed supplies of copper and devote them to military use, thus probably preventing completion of some, if not all, of the REA projects now under way.

It will also apply to private utilities, these sources said, forbidding them to use copper in electrical improvements any less urgent than those of the farmers which would have been served by REA. The REA and the private utilities will have copper enough left for maintenance purposes, it was contemplated.

The REA was reported to have about 500 tons of the scarce metal on hand.

Alabama

Rate Base Fixed

THE Alabama Public Service Commission has a "rate base" valuation of $22,225,120 on the Birmingham Electric Company, which bond brokers are seeking to sell to the city or county for a reported $28,000,000 for public operation of the utility. County Commission President R. H. Wharton made public recently a letter from I. F. McDonnell, chief of the commission's bureau of utilities, disclosing the above figure as the commission's valuation of BECO properties for "rate-making purposes."

At the same time, Wharton revealed that the Securities and Exchange Commission and the division of power, Department of Interior, Federal regulatory bodies, had placed no rate-making or other value on BECO.

Meanwhile, a check on tax records at the courthouse showed that the total assessed valuation of BECO real and personal properties in Birmingham and Bessemer was $14,001,789.

Of this figure, $13,116,980 is assessed in the Birmingham division and $884,809 in the Bessemer division of the county.

The Alabama Power Company was said to have offered to purchase Birmingham Electric for a price in excess of $21,000,000, but Paul B. Sawyer, president of National Power & Light Company, New York holding concern, said this offer was unacceptable.

Arkansas

FPC Seeks Books

THE Federal Power Commission on July 22nd announced it had started an investigation to determine whereabouts of books and records required to ascertain the original cost of the properties and the proper reclassification of accounts of the Arkansas Power & Light Company, an Electric Bond and Share subsidiary with offices in Little Rock.

The commission order said there were reasonable grounds to believe the missing books and records "have been withheld or destroyed in violation of the Federal Power Act and the commission rules and regulations."

It was contended that the Arkansas Company was concealing or withholding books and records sought by the commission to determine the reclassification of accounts and the original cost of properties of the Mississippi Power & Light Company, another Electric Bond and Share subsidiary.

Reclassification of accounts and original cost studies are required by the commission for rate-making and other purposes.

AP&L officials denied emphatically that they had withheld company books and records from the FPC.

Municipal Ownership Urged

MUNICIPAL ownership of the electric plant at Helena, now owned by the Arkansas Utilities Company, might be an opening wedge for the Tennessee Valley Authority in Arkansas, Thomas Fitzhugh, former chairman of the state utilities commission and counsel for electric coöperatives, said recently.

The Arkansas Utilities Company, which must be disposed of, owns the Helena electric, water, and artificial gas systems and the Marianna electric system. If the city of Helena is interested in acquiring the power plant, Helena could be a logical Arkansas "tie-in" point for TVA, Mr. Fitzhugh said. Helena is included in a long-range development plan that has been discussed but on which no definite action has been taken.

Helena, highest point on the Mississippi river between Cape Girardeau, Missouri, and the river's mouth, has numerous advantages, Mr. Fitzhugh said.

California

Appointment to Power Board

WILLIAM A. Holt, vice president of Bullock's and president of the California Retailers' Association, last month was appointed to the Los Angeles Water and Power Commission by Mayor Bowron.

In certifying the appointment to the city council, the mayor commented that "in my opinion he [Holt] is especially qualified by reason of training and experience for the work which shall evolve upon him, and I make the appointment solely in the interest of the city."

The new appointee also is a former vice president of the chamber of commerce and now a member of a draft appeal board. He was appointed to fill the vacancy created by the recent death of Clinton E. Miller, commission president.

The mayor also reappointed Robert A. Heffner to the same commission.

Transportation Coördinator Named

RAY L. Riley, member of the state railroad commission, last month was appointed by a convention of southern California mayors to act as coördinator of transportation for the Los Angeles metropolitan area.

The mayors took the step at the request of Joseph B. Eastman, director of the Office of Defense Transportation, who advised them that an over-all coördinator is needed in all metropolitan areas of the country to insure the transportation of workers to war plants as the supply of rubber decreases.

Riley will act under the pledge of the 45 cities of the county that each will appoint a coördinator to work with him and will abide by his decisions to the full extent permitted by the law.

Colorado

Utility Wins Writ

UNDER a stipulation entered into out of court, District Judge Robert W. Steele enjoined the state public utilities commission on July 20th from enforcing an order fixing $590,131 as valuation of the property of the Colorado Utilities Corporation for rate-making purposes. The company furnishes electricity to several towns in northwestern Colorado.

The suit was filed February 17, 1940, the company claiming the rate base ordered was

too low. Under the decision, the commission must fix the valuation at not less than $675,000, attorneys said.

Buys Private Power System

THE Mountain View Electric Association, rural electrification project, recently purchased the Commonwealth Utilities Corporation for $257,000.

Leon H. Snyder, Mountain View attorney, said the deal would be closed with the completion of abstracts, franchises, and similar papers, which remained to be signed.

The Mountain View Association was organized before the war started to furnish electricity to eastern Colorado counties, and has arranged for a government loan of $267,000. Purchase of the Commonwealth is being financed through the loan, which will run for twenty-five years.

A government loan of $241,000 also has been authorized for development of the Mountain View set-up, but the project came to a standstill with the outbreak of war and the inability to obtain materials.

Commonwealth lines extend from Colorado Springs to Genoa.

Connecticut

Utility Loses Court Fight

THE Hartford Gas Company on July 17th lost its appeal in the United States Circuit Court of Appeals for a review of an order of the Securities and Exchange Commission which denied the company's application for a finding that it was not a subsidiary.

The company had asked that it be declared not a subsidiary of the United Corporation, the United Gas Improvement Company, or the Connecticut Gas & Coke Securities Company, which are registered as holding companies. The Hartford Gas Company urged that, consequently, it was not subject to the provisions of the Public Utility Holding Company Act applying to subsidiary companies.

The prevailing opinion, affirming the order of the SEC, was written by Circuit Court Judge Harrie B. Chase and was concurred in by Judge Learned Hand and Judge Augustus Hand.

The circuit court ruled that it lacked the power to decide the issue *"de novo."* Judge Chase wrote that "a review of the evidence within the limits permitted does not disclose that the SEC order lacked substantial evidential support."

Illinois

Gas Rate Cut Approved

THE state commerce commission on July 15th announced approval of new gas rates of the Iowa-Illinois Gas & Electric Company, reflecting the full amount of saving to customers resulting from a reduction in wholesale rates to the company by the Natural Gas Pipeline Company.

The commission previously approved new rates, reflecting full savings, of the Public Service Company of Northern Illinois, the Western United Gas & Electric Company, and the Illinois Northern Utilities Company.

The commission declined to accept, without a public hearing, rates proposed by the Kewanee Public Service Company and the Peoples Gas Light & Coke Company of Chicago, reflecting only half the savings. The seventh company involved, Princeton Gas Service Company, was still negotiating with the commission.

Indiana

Tax Elimination Hits Snag

MAYOR John R. Britten's proposal to finance the city of Richmond's operating expenses in 1943 from municipal light plant earnings and elimination of a city tax levy faced opposition recently. Britten proposes to take $380,000 from plant revenue, pointing out that earnings last year were $520,000.

However, W. Ray Stevens, plant manager, told the city council that if $380,000 were taken out of earnings in 1943 and $300,000 in 1944, the plant would have only $60,000 in its depreciation and reserve funds at the end of 1944. The present plant reserve is almost $900,000, nearly all of which is needed to purchase new turbo-generating equipment, said Stevens.

In recent years the city has been taking $275,000 to $315,000 annually from plant earnings to reduce city tax levies. Mayor Britten contends taxpayers should be given the benefit of savings when other tax bills are high. He said this could be done next year without

robbing the plant of adequate financial protection.

An ordinance to transfer the proposed $380,000, as well as a 10 per cent increase in pay to police, firemen, and other city employees not holding elective offices, was referred to committees for study.

Loses Right to Supply Power

PERU municipal utilities must discontinue furnishing electric current to the Peru naval reserve aviation base, according to a War Production Board order assigning the contract to the Miami-Cass Rural Electric Membership Corporation.

Alvin A. Snyder, local REMC manager, said the WPB order also abrogated a contract for similar service between the city and the Victory Ordnance Corporation, which is building a plant in Peru under Navy supervision.

The WPB ruled that the REMC would be able to furnish the service with use of less critical materials than would be required by the municipal corporation.

Attorney Gration P. Wickerham, REMC counsel, said the WPB charged municipal officials with using critical materials to erect lines to the air base without permission. He said the city had been ordered to tear down the lines. No statement was obtained at the time from city officials.

Iowa

Gas Rate Reduced

THE Iowa-Illinois Gas & Electric Company announced last month that a gas rate reduction for Davenport had been worked out whereby consumers would save approximately $60,000 yearly. All types of users will benefit.

According to H. E. Littig, vice president and secretary of the company, the reduction is made possible by the lowering of wholesale rates by the Natural Gas Pipeline Company, acting under orders from the U. S. Supreme Court. That body held against the pipe-line company in recent litigation regarding its rates.

Littig said the average reduction to residential consumers would amount to 7.94 per cent and to 7.66 per cent to commercial users.

Kentucky

Intends to Buy Utility

THE Frankfort Utility Board, recently appointed to negotiate for the purchase of the electric plant in Frankfort, on July 16th notified the Tri-City Utility Company of its intention to buy.

Board Chairman Leslie W. Morris, attorney and president of the Farmers' Bank & Capital Trust Company, made the announcement, adding that similar notices were sent to the Securities and Exchange Commission and the Kentucky Public Service Commission.

If the Tri-City fails to reply to the board's notice within sixty days, the city may start condemnation proceedings against the electric property, Morris said. The city's procedure so far, he said, has been conducted in conformity with Kentucky's TVA Act, although no official mention of possible connection with TVA has been made. Morris and the board members declined to state what purchase price would be offered to Tri-City.

Action Deferred on Sale

COUNSEL for several parties on July 20th deferred action on a request for an order of sale of the Kentucky Public Service Company which serves Glasgow. The company is in receivership and the Kentucky Natural Gas Corporation recently obtained a judgment of $55,000 against the utility.

The utility has a bonded debt of $133,000. The matter of the sale was brought before Federal Judge Mac Swinford, who suggested to counsel that they confer about the case so that a clear-cut issue could be put before the court. The public, he pointed out, was not represented at the hearing, nor were creditors represented. All parties would present an agreed judgment for approval later.

The gas company wants to buy the utility, but the court suggested that a minimum price be set so that the court could refuse to approve a sale that would represent only a trifle of the values involved.

Michigan

Transit Operators Suspended

OFFICIAL notices of suspension went out on July 20th to 439 Detroit Street Railway coach and street car operators as a result of a recent wildcat strike of a small minority of members of the Street Railway Men's Association (AFL). Meanwhile, the system was

operating on normal schedules as a result of a 7-day week and overtime hours for many of the approximately 3,500 nonstriking members of the union. The DSR general manager, informed the street railway commission that 439 was the official count of suspended men, but that a number might be added later as a result of continuing investigation.

Of the suspended men, 129 were probationary employees and 310 regular employees. For the probationary employees, suspension amounted to discharge.

Missouri

Utility Deal Opposed

A MOTION opposing approval by the state public service commission of the proposed reorganization of Laclede Gas Light Company of St. Louis unless there is an agreement that rates of two other companies affected by the plan, Laclede Power & Light Company and St. Louis County Gas Company, will not be increased for at least ten years, was filed with the commission on July 20th by State Attorney General Roy McKittrick.

McKittrick said he was "protesting generally" on behalf of the general public and "more particularly" on the part of customers of Laclede Power & Light Company and St. Louis County Gas Company in intervening in the case. He charged approval of all phases of the plan would result in rate increases for present customers of both of these companies.

The commission had set the reorganization case for hearing in St. Louis beginning July 29th. In addition to reorganization of the security structure of Laclede Gas, the plan included sale of the property of Laclede Power, an affiliated company, to Union Electric Company of Missouri for about $10,000,000 and makes provision for financing of possible future acquisition of St. Louis County Gas Company by Laclede Gas.

The St. Louis County Gas Company is controlled by North American Company, parent holding company of Union Electric. The two Laclede companies are controlled by Ogden Corporation, a holding company.

McKittrick asserted approval of the plan would give Laclede Gas a monopoly on gas service in St. Louis and St. Louis county and would give Union Electric a monopoly on electric service in the same area. He asserted this would destroy competition and be in violation of the state antitrust laws. He charged the monopolies that would be created by the plan were against the interest of the public.

Judge Found Prejudiced

A SPECIAL commissioner of the state supreme court ruled last month that Circuit Judge Marion D. Waltner of Kansas City was prejudiced against the Kansas City Public Service Company "to such an extent" that the company "could not have a fair and impartial trial before him." The commissioner, State Senator Edward A. Barbour, Jr., of Springfield, recommended that the court issue a writ of prohibition preventing Judge Waltner from proceeding with two damage cases pending before him against the company.

The company contended that Judge Waltner resented any litigant seeking changes of venue from his court and noted that it had taken more than 250 such changes.

"I find as a fact," Barbour wrote, "that the respondent (Waltner) was actually prejudiced against the relator (company) to such an extent that the relator in the two cases here involved could not have a fair and impartial trial before the respondent. In so doing, I do not desire or intend in any way to reflect in any manner upon either the integrity or the honor of the respondent."

Nebraska

District Must Pay Tax

NEBRASKA'S three major hydroelectric districts were faced last month with the possibility of being forced to pay state and county taxes on millions of dollars worth of property, as the result of a ruling by District Judge J. L. Tewell.

Gerald Gentleman, manager of the Platte Valley Public Power and Irrigation District, declared that "if the court's decision is upheld, it will undoubtedly mean that the government will be forced to take over the projects because they cannot pay all state and county taxes and at the same time meet other obligations." The issue, whether or not the power districts are subdivisions of government, has come up in several previous cases, and district courts generally have held that the districts are exempt from taxes because they are divisions of the government. Judge Tewell ruled the districts are not governmental subdivisions, and therefore are subject to the same taxation as private corporations.

In making the decision, Judge Tewell said that if upheld by the supreme court the ruling would mean added revenue to the county and state, and would be a material benefit to other taxpayers. The last legislature provided districts could, in lieu of taxes, make payments on the real estate owned by the districts based on the value when taken over by the districts. No provision was made for personal taxes.

The original suit by Lincoln county against the Platte Valley district was brought to collect taxes on the district's automobiles and trucks, but the court's ruling will affect all property owned by the several districts.

New York

Rate Revision Permitted

THE state public service commission on July 17th granted to the Central New York Power Corporation permission to establish a wholesale electric power rate in Watertown, Ogdensburg, Utica, Little Falls, and Rome.

The commission estimated that the new rate would reduce the company's annual revenue $11,000. Wholesale consumers holding special contracts will be placed under the rate when their contracts expire.

North Carolina

New Power Rates Accepted

PROPOSED residential electric rate reductions offered by the Tidewater Power Company have been accepted by the electric rate adjustment commission, representing 35 eastern North Carolina towns.

Stanley Winborne, chairman of the state utilities commission, who announced the acceptance last month, said the city of Wilmington and New Hanover county had not yet accepted the Tidewater offer for their area, but that local officials of the two governments had promised a resolution explaining their positions.

Winborne said the reduced rates would save the area outside New Hanover county, known as the "transmission territory," approximately $28,500 per year. He explained that consumers who use more power get a greater reduction.

Ohio

Utility Tax Rejected

THE Democratic majority of the Columbus city council, with Council President W. Herbert Dailey casting the deciding vote, last month rejected the 3 per cent utility excise tax ordinance, sponsored by Councilman Joseph R. Jones, as a means of raising money to put 270 recently furloughed police and firemen back to work.

In a short 2-hour session on July 13th the efforts of the Republican minority, including Councilmen Ray G. Hauntz, Frank H. Kearns, and Mr. Jones, to pass the utility tax encountered solid Democratic opposition, the measure being defeated 4 to 3.

Oregon

Power Negotiations Off

NEGOTIATIONS between the Bonneville Power Authority and Portland General Electric Company for a long-term contract for Bonneville power have been broken off by failure of negotiators to agree on a price for the company's properties in the event Congress passes a Columbia river power bill authorizing the government to take over private utilities or a public district is formed for such acquisition.

Bonneville will continue to supply Portland General Electric with day-to-day power as it has since December 1st, when the old temporary contract expired. Dr. Paul Raver, Bonneville Administrator, has insisted that an option on all properties as well as immediate sale of facilities in two small districts already formed be the price of a new power contract. This, it was contended in utility quarters, is a wholly extralegal attitude because Bonneville has no authority to buy now, or make the company sell to others.

Latest negotiations lasted more than a week, it was reported.

Pennsylvania

Rate Increase Deserved

"THE city of Philadelphia got exactly what it deserved." That was the comment of Public Utilities Commissioner Thomas C. Buchanan on the increase in gas rates ordered at a secret session of the city's gas commission. The commission has no jurisdiction over the rates because the Philadelphia Republican delegation jammed a special bill through the 1939 legislature, as a part of the deal whereby the city had pawned the gas works to get out of a financial jam. A short time before the state commission had ordered a 5-cent reduction in rates, which was stopped by an injunction of the Dauphin County Court.

More than 480,000 domestic and commercial users will be affected. The increase will add 16 to 17 cents to the average householder's monthly bill of $2, it was reported.

The gas commission voted to boost the rates without holding any hearings or even giving public notice of its intentions.

George Maxman, chairman of the council, justified the commission's action on the basis of a plea by the Gas Works Company that rising prices for materials, notably fuel oil, would result in a deficit unless the rate was boosted.

In an effort to stave off the increase, representatives of OPA were scheduled to confer with city officials and officers of the Philadelphia Gas Works Company. Object of the conferences was to determine if the rate boost, effective September 1st, can be avoided by effecting economies in the company's operation.

Mayor Bernard Samuel said he would seek a government subsidy in the hope of averting, or reducing, the increase. Secretary of Commerce Jesse Jones, head of the RFC, on July 20th promised to attempt to save Philadelphia gas consumers from having to pay the increase.

Jones and the RFC can help by extending the proposed government oil subsidy to include Bunker C fuel oil, the type used in manufacture of Philadelphia's gas. The purpose of the subsidy is to cover increased transportation costs and to keep down the price.

South Carolina

Contract Terms Announced

THE contract under which the South Carolina Electric & Gas Company, of Columbia, will purchase 4,000,000 kilowatt hours of electrical energy per month, or 48,000,000 kilowatt hours annually, from the Santee-Cooper Authority, was made public last month. It disclosed that the Columbia concern will pay 5½ mills per kilowatt hour for the power.

Walter Herbert, director of the electrical utilities division of the state public service commission, made public the document and said it had now been signed by all parties and given official approval by the commission, which is the state's utility regulatory body.

The contract calls for the first delivery of energy to Columbia September 1st.

Texas

Utility Case Transfer Asked

A HEARING on an injunction sought to prevent the city of San Antonio from condemning and purchasing San Antonio Public Service Company properties was temporarily sidetracked in district court on July 17th when the city filed a plea of privilege.

The plea, which took precedence, asked that the application for an injunction filed by the Guadalupe-Blanco River Authority be argued in Bexar county, of which San Antonio is the seat. The company's central offices are in New Braunfels. Meantime, Judge M. C. Jeffrey said that the temporary restraining order issued early last month would remain in effect.

The authority and city both are attempting to condemn the properties, for which the city already has closed a deal at a total cost of nearly $35,000,000.

The American Light & Traction Company has agreed to sell the Public Service Company common stock to the city for $10,000,000.

Gas Rate Case Ends

THE Lone Star Gas Company gate rate case, which has traveled back and forth between trial and appellate courts for nearly nine years, came to an end on July 17th with the company accepting a gate rate of 30 cents per thousand cubic feet of gas sold for resale for domestic and commercial uses. The case, which had been to the United States Supreme Court and back, ended with filing of six agreed judgments in four Austin courts.

The Lone Star Gas Company agreed to pass the entire reduction in the wholesale rates to ultimate domestic and commercial users as of May 15, 1942.

The Latest Utility Rulings

Gas and Electric Companies Permitted to Change Method of Monthly Billing

THE general proposition of bimonthly billing and meter reading by gas and electric companies should at least be given a trial, says the Massachusetts Department of Public Utilities. This is in the interests of the war effort and to conserve tires and automobiles and as a measure of economy.

A Massachusetts statute, referring to schedules of rates filed with the department, provides that rates shall apply to consumption shown by meter readings made after the effective date of such rates unless the department otherwise orders.

In the opinion of the department, charges should be made in accordance with the provisions of this statute based on any consumption of gas or electricity shown by meter readings, and estimates of consumption to be applied cannot properly be used unless authorized by order of the department. The department, therefore, authorized the estimating of consumption for purposes of monthly billing, after stating the plan of the company as follows:

> One proposition advanced for consideration is to read the meters bimonthly and bill the customer each month as set forth in the currently effective schedules. The consumption of gas and electricity for billing purposes in the intermediate month would be determined on an estimate based on previous year's use. The subsequent month's consumption would be based on an actual reading and would ordinarily correct any possible error made in the estimate of consumption made in the previous month.

Re Change in Method of Monthly Billings (DPU 6864).

Quarterly Meter Readings and Customer Meter Readings to Save Tires

IN an effort to prevent unnecessary waste of rubber, gas, and labor, the Georgia commission has prescribed for rural areas a quarterly meter-reading period, with an alternative plan for customers who desire to read the intervening months' consumption of their own meters and submit the monthly readings on forms mailed to the customer by the company. This action resulted from a consideration of various plans of making periodic meter readings on routes of more than 10 miles.

The method of operation under this plan is indicated by the following abstract which is quoted from the commission order:

> That all electric utility companies operating in Georgia following the next regular meter reading, shall be relieved of the requirement of making regular monthly meter readings and may thereafter secure quarterly readings of all residential and commercial electric meters without demand attachments located along the rural lines, except where the customer elects to read his own meter in the intervening months and forward the readings to the company on forms sent out for that purpose. The basis of the intervening monthly billings, where estimated consumptions are to be used, will be the average of the customer's kilowatt-hour consumption of the preceding quarter, for all customers with earlier readings. The billing for the month when the meter is read by the company will be the difference between the sum of the kilowatt hours previously billed, using estimated or customer

readings, and the total kilowatt hours actually consumed, as recorded by the meter during that period. The established rates applicable to each service will be applied without change to all bills, including the estimated bills, which will be computed as though they were actual readings.

. . . That the meters of all new customers shall be read on the same basis as herein provided except that where such customer does not elect to read the meter, billings will be rendered on the basis of a predetermined estimated consumption and provided further that the average consumption per month, as determined in each quarter of the first twelve months billed, where estimated bills have been rendered, will become the base bills of such new customers for all future calculations.

Re Electric Utility Companies Rules and Regulations (File 19314-1 Nondocket).

Zoning Ordinance Not Enforceable By Service Denial

A PUBLIC utility corporation cannot refuse to serve because of some collateral matter not related to service, according to well-established principles. The court of civil appeals of Texas applied this rule in requiring a water district to furnish water notwithstanding a provision, in a contract with a municipality from which it obtained water, attempting to restrict service to persons complying with a zoning scheme or plan. The court stated:

> This case does not involve an attempt to regulate the use of property under the police power by means of a comprehensive zoning ordinance, and the question may be narrowed to an inquiry as to whether or not a public service corporation may refuse to deliver water to a person demanding the same because said individual has failed to comply with certain ideas or standards of property use, embodied in a contract between the public service corporation and another body corporate from which it receives its supply.
>
> The fact that the contract here is between a municipality on one hand and a quasi municipal corporation (a water district) on the other can make no difference in the legal situation, for, as above pointed out, no attempt was made to effect a zoning arrangement by an exercise of the governmental powers of the municipalities involved. The question of whether or not a water district may restrict particular uses of property within its boundaries to certain zones is not involved, nor is the power of the city to so restrict uses of property lying outside its corporate limits.
>
> Appellee admittedly desires to use his property for the purpose of maintaining a dog and cat hospital. Such use is neither illegal nor violative of any rule of public policy. This being true, appellant was not justified in its refusal to deliver water to appellee.

Nueces County Water Improvement District No. 1 v. Spring, 162 SW(2d) 155.

Auxiliary Gas Service Proposals and Oil Surcharge Disapproved

A NEW service classification available for auxiliary or alternative use by large gas customers, containing unusual conditions and providing for an oil surcharge, has been disapproved by the New York commission. Chairman Maltbie described the company's proposal:

> The new service classification covers manufactured gas with a minimum heating content of 537 BTU per cubic foot and pressure of at least 4.5 inches. The service was to be available to any consumer whose maximum hourly demand exceeded 5,000 cubic feet and who would agree "in advance to use and/or pay for not less than 100,000 cubic feet of gas" every month for at least a year, and yearly thereafter subject to the provision, however, that the consumer could terminate service on two days' written notice *after one year* and the company could terminate at any time, not being obligated to give service for at least one year. However, if the consumer terminated service within a contract year, he was obligated to pay the minimum charge which was $100 per month for the remainder of the year.

The schedule for this service, as pro-

posed by the company, provided for an increase in rates to consumers using over 1,000,000 cubic feet of gas per month if the price of Bunker C oil should increase over a base price. In addition, customers would be required to pay the cost of connecting with the company's high-pressure system when the company considers that such connection should be made.

Prospective customers use gas in small quantities at present and are interested in being able to supply their large boilers with gas instead of oil when necessary. The company's proposals are designed to make a temporary or emergency service available to such users, substituting gas during a period of fuel oil shortage.

The commission found that some of the conditions might result in unjust discrimination or undue preference. The company might terminate service to a customer without payment, whereas the consumer could not terminate service within a year without paying the company a considerable sum. The company would be free to require one consumer to pay for connections and release another.

Service would be artificially restricted to those who have normally been supplied with heat from another source and obligate new users to retain their facilities in order that they may resort to them in case the company terminates service.

The proposed rates, said Chairman Maltbie, resemble the breakdown service rates found in the electrical field. He pointed out several distinctions, however, between electric breakdown rates and the proposals for this type of gas service.

With respect to the oil surcharge, it was said that many more complexities were involved than in the case of surcharge for electricity. Besides the effect of variable gas and materials there are many by-products from the manufacture of coke oven and water gas to be considered, the value of which must be deducted from the cost of gas manufactured. The cost of Bunker C oil, said Chairman Maltbie, does not directly and proportionately affect the cost of gas. The surcharge method would not take into account variations in revenue from residuals. He pointed out that some expenses are affected to a small degree by output and that increased costs in some directions are offset in whole or in part by decreased costs in other directions. *Re Brooklyn Union Gas Co. (Case No. 10622).*

Milling Process Does Not Change Taxable Character of Ore Shipments

A ROAD tax is imposed upon the transportation of ore and concentrate over public highways if the ultimate product is to be sold, even though after the milling process only a small part of the original shipment goes into commerce. Such is the ruling of the Colorado commission in a decision denying a contention that the Vanadium Corporation of America should not pay a tax on such shipments.

The Vanadium Corporation owns mines and a mill, purchases a small portion of treated ore from other producers, transports ore by its own trucks to its mill, and by the milling process obtains vanadic pentoxide. A ton of ore, it was said, produces about thirty pounds of the product, which is then hauled by the company's own trucks to a shipping point from which it is sent by railroad to a refinery in Pennsylvania, and there iron and other ingredients are added to produce ferrovanadium.

The company contended that the law imposing a road tax was not applicable because the transportation was not for the purpose of sale but was the transportation of rock and material to be milled and treated, which is a step in the production of the ultimate product.

The commission was of the opinion that this operation is not any different from that of any other mining operation,

for the reason that the sole purpose in mining and milling ore is ultimately to sell a finished product. Running ore through the mill to produce a higher concentrate is but one step in the operation. Even after the concentrate is produced, it is still sold upon the assay value of the mineral content. The ton-mile tax is imposed for use of highways, and the burden upon or use of roads by the company is no less than it would be if the load were to be sold "as is."

Upon denying a rehearing at a later date, the commission said:

> The fact that but a minute proportion of product is recovered which, after further treatment, is sold, does not, in our opinion, change the fact that the original crude ore which is permeated with so-called "vanadium," is property that is being transported for sale in the furtherance of a commercial enterprise. Certainly, the gold content of ore would produce a much smaller product, so far as volume is concerned, that is ultimately sold than would be the case with the vanadium ore, and its gross value as produced at the mine, in many instances, would not exceed, and in some cases would be less than the gross value of the vanadium ore described in the petition. The fact that a chemical change occurs in the constituent elements, does not, in our opinion, justify the position that the original product which is being transported to the mill or to the railhead, is not being transported for sale. If this position is correct, then the owner of a flour mill who transports his own wheat to the mill for the purpose of making flour, would not be subject to the provisions of the Commercial Carrier Act, because it is not the wheat that he is hauling to sell, but the product which he derives therefrom, to wit, flour. Petitioner's argument would appear to be fallacious and, in our opinion, not justified or intended by the legislature when the Commercial Carrier Act was passed. We believe it is immaterial whether the change, by reason of certain processes to which the property is subjected, constitutes a chemical change in the elements comprising the product, or a mere change in the nature of the commodity, like making flour out of wheat, brick out of clay, or shingles out of logs.

Re Vanadium Corporation of America (Case No. 4846, Decision Nos. 17400, 18992).

Other Important Rulings

THE Securities and Exchange Commission held that anticipated difficulties in effecting divestiture by a holding company of certain scattered utility interests would be irrelevant to the question of the status of such properties under the standards of § 11(b)(1) and would not constitute a bar to the entry of a divestment order. The commission also held that an interest in transportation properties not related to the operation of any public utility system was not retainable under the "other business" clauses of §11(b)(1) of the Holding Company Act. *Re United Gas Improvement Co. et al. (File No. 59-6, Release No. 3511).*

The court of civil appeals of Texas, in passing upon the validity of an ordinance and a contract relating to the gathering and disposition of garbage, declared that a public utility is a business organization which regularly supplies the public with some commodity or service, such as gas or electricity; that one of the distinguishing characteristics is the devoting of private property by the owner to a service useful to the public and which the public has a right to demand so long as it shall be continued with reasonable efficiency under proper charges; and that a service could be such, in the performance of a health regulation within a given area, that it could be classed as a public utility. The court held that an ordinance and contract providing for garbage and refuse collection, fixing minimum and maximum charges, through the agency of an individual was valid. *Wichita Falls et al. v. Kemp Hotel Operating Co. et al. 162 SW(2d) 150.*

A Federal District Court upheld a ruling of the Pennsylvania commission that the transportation of goods in interstate commerce was a mere subterfuge to escape the jurisdiction of the commission

and the Public Utility Law and dismissed a complaint to enjoin enforcement of the commission's order to cease and desist. An appeal was granted as a matter of right, but a petition for injunction pending disposition of the appeal was denied on the ground that the application should be made to the Supreme Court or to a justice thereof. *Ryan et al. v. Pennsylvania Public Utility Commission, 44 F Supp 912.*

The supreme court of Wisconsin, after discussing the regulation of common carriers and contract carriers, ruled that a valid distinction is provided for in the statute between the "public convenience and necessity" to be looked for in the case of a common motor carrier and the "convenience and necessity" to be considered in licensing a contract motor carrier, stating that if there is a reasonable need apparent for the use of the service and if the common carrier is not unduly interfered with or the public highways unduly burdened, a case of convenience and necessity exists with respect to a contract carrier. *United Parcel Service of Milwaukee v. Public Service Commission, 4 NW(2d) 138.*

The supreme court of North Carolina reversed an order of the superior court restraining until final judgment an arrangement approved by the commission for handling mail and express upon discontinuance of trains, the appellate court holding that local authorities and a chamber of commerce were not entitled to prosecute the appeal from the commission order, since they did not show a right or interest to be protected, although they had appeared without applying to intervene and had been heard in opposition before the commission of the state. *North Carolina Utilities Commission v. City of Kinston et al. 20 SE(2d) 322.*

Authority to transfer a motor carrier certificate was granted by the Colorado commission notwithstanding the fact that the transferee had previously been prosecuted and fined for illegal operation, where the transferee's reputation and standing in the community were good and the transferor was in poor health and unable to carry on operation. *Re Monroe (Application No. 2461-A, Decision No. 18998).*

A rule prohibiting the interchange of freight between private carriers, between a common carrier and a private carrier, and between an operator in its capacity as common carrier and himself in his capacity as a private carrier, was given effect by the Colorado commission in an order denying authority to transfer a permit authorizing private carrier service. The transferee contemplated using the same officers, employees, solicitors, office, telephone, advertising, bills, and equipment for both private carrier and common carrier service. *Re Knight et al. (Application No. 3861-PP-AAA, Decision No. 18840).*

A connecting track built and owned by the United States, when connected with a railroad, constitutes a part of the railroad transportation facilities and is subject to the jurisdiction of a state commission, it was ruled by the Pennsylvania commission in denying an application for rescission of a preliminary order relating to construction of grade crossings. *Re Erie Railroad Co. et al. (Application Docket No. 61262).*

Condemnation of property for crossing improvements subjects the property to no greater use than the exigencies of the project require, and a fee simple title is not acquired, according to a ruling of the Pennsylvania commission in a case where a rehearing was denied when requested solely for the purpose of determining whether or not title to a portion of property not used for the purpose of a crossing improvement remained in the name of a landowner. *Re Allegheny County Authority (Application Docket No. 33726).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 44 PUR(NS) NUMBER 2

Points of Special Interest

¶ *These reports are published annually in five bound volumes, with an Annual Digest. The volumes are $6.00 each; the Annual Digest $5.00. A year's subscription to* PUBLIC UTILITIES FORTNIGHTLY, *when taken in combination with a subscription to the Reports, is $10.00.*

Titles and Index

TITLES

INDEX

CONNECTICUT PUBLIC UTILITIES COMMISSION

Re The Connecticut Light & Power Company

[Docket No. 7203.]

Discrimination, § 75 — Rates — Old patrons — Elimination of obsolete schedules.

1. Rate schedules of companies merged into a surviving company, permitted to continue in force for a reasonable length of time in order that customers might shift to applicable rates of the surviving company, should be eliminated as obsolete and discriminatory when not available to new customers and benefiting only customers using service in very small amounts, the revenue involved being inconsequential, p. 66.

Rates, § 303 — Fuel adjustment clause.

2. Introduction of a fuel adjustment clause into gas and electric rate schedules should be authorized as a means of integrating public utility rates, which are generally of a rigid nature, into a flexible national economy, bringing about a reduction in customer payments during a period of falling prices in depression eras when customers must reduce living expenses and likewise increasing the price to customers in an upward swing of price levels at a time when the ability of the customer to pay has moved upward, p. 67.

[June 17, 1942.]

PROPOSED *changes in electric and gas rate schedules; newly filed schedules permitted to go into effect.*

By the COMMISSION:

Finding Approving Proposed Changes

The Connecticut Light and Power Company filed with the Commission on May 21, 1942, the following amendments to its schedules of rates for gas and electric service on file with the Commission:

Group I

The following rates are being withdrawn and canceled:

Electric

	Effective
Rate No. 14 — Household Service (Alternative)	March 27, 1936
Rate No. 15 — Household Service (Alternative)	March 27, 1936
Rate No. 16 — Household Service (Alternative)	March 27, 1936
Rate No. 17 — Household Service (Alternative)	March 27, 1936
Rate No. 28 — Commercial Service—Limited Use	Dec. 27, 1937
Rate No. 35 — Commercial Service (Alternative)	March 27, 1936
Rate No. 37 — Commercial Service (Alternative)	March 27, 1936
Rate No. 38 — Commercial Service (Alternative)	March 27, 1936
Rate No. 46 — General Power	Dec. 27, 1937
Rate No. 108 — Primary Power	Dec. 27, 1937
Rate No. 111 — Wholesale Power	Dec. 27, 1937

Gas

Rate No. 7 — General Gas Service (Alternative)	March 27, 1936
Rate No. 8 — General Gas Service (Alternative)	March 27, 1936
Rate No. 9 — General Gas Service (Alternative)	March 27, 1936
Rate No. 10 — General Gas Service (Alternative)	March 27, 1936
Rate No. 12 — General Gas Service (Alternative)	March 27, 1936
Rate No. 13 — General Gas Service (Alternative)	March 27, 1936

Group II

The following rates are being withdrawn and are being refiled to include a new or revised fuel clause:

Electric

	Effective
Rate No. 34 — Wholesale Commercial Service	June 27, 1940
Rate No. 45 — General Power	Dec. 27, 1937
Rate No. 49 — General Power	Dec. 27, 1937

Gas

Rate No. 1 — Household Gas Service	May 27, 1940
Rate No. 2 — Household Gas Service	May 27, 1940
Rate No. 3 — Household Gas Service	May 27, 1940
Rate No. 4 — Household Gas Service	May 27, 1940
Rate No. 5 — Household Gas Service	May 27, 1940
Rate No. 6 — Household Gas Service	May 27, 1942
Rate No. 14 — Commercial & Industrial Service	Nov. 27, 1939
Riders B and C	Nov. 27, 1939
Rate No. 15 — Commercial & Industrial Service	Apr. 27, 1938
Rate No. 17 — Commercial & Industrial Service	Apr. 27, 1938
Rate No. 19 — Commercial Space Heating	March 27, 1936
Rate No. 20 — Commercial Space Heating	March 27, 1936
Rate No. 22 — Industrial Gas Service	Nov. 27, 1940
Riders B and C	Nov. 27, 1940
Rate No. 24 — Industrial Gas Service	July 1, 1938
Rate No. 31 — Household Service—Wholesale	Apr. 27, 1942

These amendments in rates, effective June 27, 1942, were suspended by order of the Commission, dated May 22, 1942, pending an investigation of the reasonableness of the amendments and the Commission on May 22, 1942, assigned a hearing to be held on the reasonableness of such amendments at the office of the Commission in Hartford on Tuesday, June 2, 1942. Notice that the amended schedule of rates set forth above had been filed and the time and place of the hearing on their reasonableness was given to the selectmen of the several towns in which The Connecticut Light and Power Company distributes gas and electricity and by legal notice published on May 25, 1942, in the Waterbury American, New Britain Herald, Meriden Journal, Bristol Press, Middletown Press, Willimantic Chronicle, and Winsted Citizen. At the time and place assigned for a hearing The Connecticut Light and Power Company appeared by its president and other officers. Several consumers of New Britain appeared by an attorney, the town of Plainville by its first selectman, the borough of Naugatuck by its warden, and the Chase Brass Company by a representative.

[1] The amendments to the electric and gas rates set forth under Group I above eliminate rates that were in force in the territories of some utility companies at the time those companies were merged into The Connecticut Light and Power Company. These rates were permitted by The Connecticut Light and Power Company to continue in force for the customers then being served to avoid customer displeasure and to permit of a reasonable length of time within which such customers might shift to the rates of The Connecticut Light and Power Company applicable to the service supplied such customers. These rates have not been, therefore, available to new customers of The Connecticut Light and Power Company in the

classes affected as such new customers applied for service. Generally speaking, the comparable rates of The Connecticut Light and Power Company provided for a lower unit cost of the service if the customer used the service more than a minimum amount. These old rates benefited customers who used service in very small amounts.

The revenue involved by the amendments to rates in Group I is inconsequential. At the present time there are only 79 customers receiving service under electric rates Nos. 14, 15, 16, and 17 whereas there were 874 customers receiving service under those rates in April, 1939, the time when they were withdrawn from general use. The increase in revenue from these 79 customers by the elimination of these rates is approximately $120 annually. Electric rates Nos. 28, 35, 37, and 38 in Group I affect commercial service involving 81 customers. At the time these rates were withdrawn from general use in 1939, 749 customers were receiving service under them. The increase in revenue applicable to these rates will approximate $300 annually. Electric rates Nos. 46, 108, and 111, applicable to industrial customers, affect only 65 customers at the present time whereas 160 customers were being served under them in September 1939 when they ceased to be available to new customers. The increase in revenue resulting from these 65 industrial customers approximates $9,500 annually.

Gas rates Nos. 7, 8, 9, 10, 12, and 13, in Group I, have not been available to new customers since March, 1936. At that time these rates were available to 13,830 customers. At the present time 5,687 customers are served under these rates. The estimated increase in revenue applicable to these rates is approximately $27,500 annually.

The Commission believes that as a general principle all customers similarly situated should be treated in the same manner with respect to rates. This principle is generally accepted because, fundamentally, rates should be based on the cost of supplying the service and one customer should pay the same amount as is paid by another customer in the same class where the cost of serving each of them is substantially equal. These rates may, therefore, be regarded as obsolete rates and discriminatory.

The Commission finds the amendments to the company's schedule of rates, set forth under Group I above, are reasonable and proper and the withdrawal and cancellation of them are therefore permitted to go into effect as of June 27, 1942.

Finding Respecting Amendments to Rates in Group II

[2] The proposed amendments to the rates set forth in Group II above involve the introduction into the company's rate schedules of a so-called Fuel Adjustment Clause. This clause is designed not to increase the company's net revenue but to permit the company to recoup increases in the cost of fuel arising out of the present National Emergency and, at the same time, to give to the customers the benefit of any decrease in the cost of fuel that may occur in any subsequent downward trend of price levels. It is a matter of common knowledge that the cost of fuel has advanced substan-

tially within the past year and no one is in a position to predict what this cost will be in the immediate future or within the next few years. If a utility company is to remain financially sound as a means of serving the public, some recognition must be given to increase in the cost of fuel as a major item of expense incurred in the generation of electricity and the production of gas.

As a general principle, the fuel adjustment clause points the way toward the solution of one of the most acute problems in the utility rate-making field, namely, that of integrating public utility rates, which are generally of a rigid nature, into a flexible national economy. The economic system of the country has been subjected in an increasing degree to strain by virtue of the tension occasioned by rigid public utility rates in a nonrigid general price situation. Anything that can be done to bring utility rates more nearly into harmony with the general economic system is to that extent a public gain. It should mean a better balance in the economic system and a more effective operation of economic forces. Fuel adjustment clauses also bring about a reduction in customer payment during a period of falling prices in depression eras when customers are most in need of reducing their living expenses. Likewise the increase in price to a customer occurring in an upward swing of price levels takes place at a time when the ability of customer to pay, as measured in dollars, has in most instances moved upwards.

Fuel adjustment clauses have been usual in electric power rates and in gas rates applicable to industrial consumers. They have come into use for household customers in recent years in this state and in many companies in Massachusetts and several other New England states.

The fuel adjustment clause involved in these amendments to electric rates establishes a price base for fuel of $4.75 a ton as a minimum and $5.25 as a maximum; that is, the rate of a customer is not affected by variations in the price of the fuel occurring between that minimum and the maximum. The particular fuel clause created by these amendments is designed not to increase the revenue of the company over that received in the base period but to recoup the increased cost of the fuel occurring since October, 1941. The estimated increase applicable to customers receiving service under rates Nos. 34, 45, and 49 approximates $44,000 annually and affects 2,300 customers receiving service under those rates.

In the gas rates, the fuel adjustment clause amendment fixes as a base the weighted average cost of fuel per thousand cubic feet of gas for the 5-year period ending January 1, 1942, which is given as 23.364 cents. As the cost of fuel fluctuates in the future the rate for gas will be increased or decreased in conformity with the fluctuations.

The estimated increase in revenue applicable to customers receiving gas service under the several gas rates set forth under Group II above approximates $89,000 and affects all of the customers of the company, principally residential customers, since the greater part of the company's sales of gas are for residential use. The average consumption of the residential customer approximates, however, only 2,400 cu-

bic feet per month. The increase under the fuel adjustment clause for such customer will approximate only about 7 cents a month at present fuel prices. Of course, when a materially downward swing in price levels occurs, the fuel adjustment clause will operate to the benefit of the customers affected.

From the evidence presented at the hearing and for the reasons set forth above, the Commission finds that the amendments to the company's electric and gas rates set forth in Group II above are reasonable and proper and they are therefore permitted to go into force effective June 27, 1942.

In the rates as now filed the company continues the Power Factor Clause and certain other features of rates presently in operation. The Commission, in accepting the new rate schedules, does not in any degree give its approval, or its disapproval, of such provisions. This decision, in line with this general principle, is limited to the one issue of the Fuel Adjustment Clause and approval of the particular fuel adjustment clauses as found herein.

We hereby direct that notice of the foregoing be given by the assistant secretary of this Commission by forwarding true and correct copies thereof to parties in interest, and due return make.

GEORGIA PUBLIC SERVICE COMMISSION

Re Georgia Power Company

[File No. 19314-1.]

Rates, § 259 — Promotional schedule — Limitation during war.

1. A promotional schedule of electric rates, applicable to consumers with increased usage but ordered to be extended to other customers after a prescribed period, should not be so extended during a war period when the resulting benefit normally inuring to the company with increased usage is absent and there is placed upon the company an abnormal burden which present revenues do not justify, particularly at a time when everyone should assist in conserving for desperate war needs vital and critical metals through the limitation of nonessential civilian usage, p. 71.

Service, § 188 — Extensions — Contribution by temporary industries — War conditions.

2. Regulations under which an electric company is required to provide extensions, as well as transformer stations, at its own expense for service to new industries, promulgated on the basis of the normal long-term usage by permanent peace-time industries, should be amended to provide for customer contributions towards the cost of extensions to serve temporary war industries, in order to protect other customers from being called upon in the future to provide a return on a greatly increased capital investment not made for their direct benefit but for the good of the nation as a whole, which cost should be absorbed in the over-all cost of the war, p. 71.

Rates, § 1 — Conference method of rate making.

Discussion of the conference method of rate making adopted by the Georgia Commission with a resultant lowering of utility rates, p. 70.

[May 19, 1942.]

INVESTIGATION *of rates, rules, and regulations of an electric company; time for full application of promotional rate schedules deferred and rules relating to customer contributions towards extensions amended.*

By the COMMISSION: A little more than five years ago, this Commission announced as its duly adopted policy "The Conference Method of Rate Making," in so far as the plan was feasible and practicable in the prescription and regulation of all utility rates. The return of annual savings to the users of utility services as a result of reduction in utility rates as disclosed by the successive annual reports to the Commission, fully justifies the soundness and practicability of this policy of rate making.

In a word, the method involves constant surveillance of the monthly operating reports of the various utilities, and which utilities are subject to a summary notice directing the officials of a particular company, whose revenues appear to justify a rate reduction to meet in public conference with the Commission for the purpose of discussing and determining the measure, as well as the proper application of the reductions to be made.

The long drawn-out rate investigations of the past were not only expensive to the utility and finally to the ratepayers, who must, in the end, bear all proper operating cost, but they were also expensive in the time consumed which postponed the realization of the benefits inuring to the consumer from such reductions as were ultimately made.

Illustrative of its success, the total annual savings effected for the consumers of electric services for the 5-year period, 1937–41, amounts to $1,949,200, of which $408,000 was realized during last year. Projecting this saving into each succeeding year means that the total annual sum of $5,790,000 has been left in the pockets of the customers of the electric utility companies in Georgia, as a result of savings from rate reductions. It is noteworthy that during this period, no increases whatever in electric utility rates have been authorized.

Through the integration of the bus and trolley car service, by which the 10-cent bus fare without transfer was reduced to the regular token rate, with full transfer privileges; changing the token sales multiple from 4 for 30-cents, to 2 for 15-cents with the resulting reduction in the number of 10-cent car-fare receipts, together with the 10-cents a round trip special, 10 A.M. to 4 P.M., shoppers' rate and the extension of a shoppers' special service, the decrease in the average ride cost in 1941 was 4.2 per cent and, based on the number of passengers carried last year, resulted in a saving of approximately one-quarter of a million dollars to the users of the metropolitan street car service in Atlanta.

During this same period, the aggregate annual telephone rate reductions

totaled $344,215, of which $115,400 was effected during last year, of 1941. Projecting the savings in the same manner over the full 5-year period represents total savings to the telephone subscribers in Georgia of $1,721,075.

During this period, some small increases in telephone rates have been allowed to induce the necessary added investments in connection with the conversion of magneto exchanges to central energy equipment.

[1, 2] As stated above, no increases have been authorized in any of the rate schedules for electric service during this entire period. Of necessity, reductions in the rates of the Georgia Power Company which provides 85 per cent of the requirements of the consumers of electric energy in Georgia, have yielded the bulk of these savings from the rates. By far, the most substatnial saving to residential consumers results from the rate adjustments that were made effective as of June 1, 1939, under which a maximum base bill provision served to immediately transfer large consumers to the inducement or revised promotional rate schedule "A-5."

The promotional schedule "A-5" automatically applicable to consumers with increased usage over the base bill amounts awarded a further saving to all such consumers using more than 15 kilowatt hours per month.

Contrary to the usual and more equitable provision of requiring a continuation of the promotional rate until such time as a fixed percentage of the customers usually representing 80 per cent, had earned the rates through increased usage, the order of the Commission prescribing the rate provided that the promotional schedule "A-5" should become the immediate rate at the end of a 3-year period, which will be the first day of June next, although a customer analysis discloses that only 58 per cent of the company's customers have actually earned and are now being served on this promotional schedule. The extension of this reduced rate at this time to the remaining customers, without the resulting benefits normally inuring to the company from the resulting increased usage, which the promotional rate was designed to provide, obviously, places upon the company an abnormal burden, and one which its present revenues do not appear to justify; whereas, the temporary postponement of the effective date, pending further study by the Commission will in nowise change or affect the present status of the customers of the company to whom all the benefits of the rates will continue to be available.

An examination of the 1940–1941 statement of the electric department of the Georgia Power Company shows that the gross income increased during the year $2,936,000, but at the same time, operating expenses, including taxes and provision for depreciation, increased some $3,940,000. This is a net decrease of approximately $1,000,000. The effect of the war measures and increased operating costs is further reflected in the results shown in the monthly operating statements of the company of the first three months operation of the electric department.

The net operating earnings of the electric department for this period of 1942 have decreased $638,600. The cause of this decrease in net revenue is due mainly to the increase in produc-

tion cost and the increase in taxes. Taxes alone have increased $818,900, which is an increase of $270,000 per month for the first three months. These figures check with the known $3,200,000 increase in the 1942 taxes already assessed against the company.

In view of the dire needs of our nation, which have necessitated the freezing orders on construction and the limitation orders on kilowatt-hour sales, both indirectly affecting and directly prescribing conditions for the extension and limitation of electric service, it should be clear that the company cannot possibly realize an increased utilization which would normally be available to offset a part of the substantial reduction in revenues, which will result from the application of the promotional rate as the immediate rate schedule. Furthermore, everything possible should be done by this Commission and everyone else to assist the War Production Board in conserving for the desperate war needs vital and critical metals through the limitation of nonessential civilian usage, such as that which would be encouraged by the extension of the promotional schedule to all the company's customers.

Another question which has been of great concern to the Commission as well as the subject matter of conference, and discussion between the Commission, prospective customers and the utility, has been the approved and presently applicable regulations governing the extension of necessary transmission and the construction of transformer substation requirements for new industries.

Obviously, these regulations, under which the company is required to provide the extensions, as well as the transformer stations, at its own expense, in connection with its service, was promulgated by the Commission on the basis of the normal long-term usage by permanent peace-time industries, and likewise, these regulations were an integral part of the wholesale rate schedules which were designed and concurrently promulgated therewith.

The company is now being called upon to provide service under these regulations to temporary war industries. Of necessity, the location of such plants is usually quite removed from the existing company facilities and the service to such industries not only involves a very large and unusual transformer expense to meet these abnormal load conditions, but frequently requires a very large expenditure for line extension.

Therefore, unless some provision is made for a contribution by such temporary industries for the expenditures required in providing them with service, with an amortization repayment plan in the event these become permanent, the customers of this company will be called upon in the future to provide a return on a greatly increased capital investment which was not made for their direct benefit, but for the good of the nation as a whole. It is proper, therefore, that such cost should be absorbed in the over-all cost of the war.

The Commission is not prepared to announce the freezing of all utility rates in Georgia, for it is conceivable that improved conditions may justify rate reductions for some utilities, but certainly everything possible should be done to prevent and forestall any necessity for increases in utility rates.

The vicious cycle of inflation receives its greatest momentum from the wage level increase and the corresponding increased cost of the family budget for the necessities of life. Every increase in living cost, no matter how small, accelerates that momentum. Our Federal administration is to be congratulated upon its strenuous and determined effort to curb the present rising costs and thus prevent inflation, and it is the patriotic duty and responsibility of every citizen, and it will be the determined policy of this Commission to assist and coöperate with the Federal government in that price control program.

Following public conferences with representatives and parties at interest, and in consideration of the foregoing, it is

Ordered: First, that the present "A-3"–"A-5" rate be continued, and that the date on which the "A-5" rate will become effective to all consumers be deferred pending further study and investigation and order by the Commission, but in no event shall the effective date thereof be deferred longer than six months after the termination of the war. Second, it is

Ordered further: That the regulations now in effect governing the ownership of lines and substations of wholesale customers directly connected with the war effort be and the same are hereby amended as follows:

(a) Customers contracting for wholesale power and engaged in an operation that is of uncertain duration in connection with the war effort shall be required to install and maintain their own transformer stations, including transformer station structure, protective equipment, and other appurtenances necessary in a complete substation installation for the individual use of such customer. All substations shall be of such design and workmanship as to conform with the standards and specifications which will be furnished by the company, without charge. Such substations and equipment shall be maintained at the customer's expense and in such condition as to permit of efficient operation that will insure against avoidable interference with the operation of the company's transmission system. Such substation shall not be subject to repurchase by the company, except by mutual agreement and subject to the approval of the Georgia Public Service Commission.

(b) Wherever it is necessary to extend existing transmission or wholesale distribution lines for the purpose of serving such new wholesale power load of uncertain duration and which are directly in connection with the war effort, or to increase the capacity of the lines for such loads, the consumer shall defray the entire cost of the extension or enlargement made to supply the electric energy.

(c) In all cases where the cost of such line extension or enlargement is paid for by the customer, the company may either (1) lease the line, (2) refund the cost thereof to the customer on a revenue or other basis over a period of years, or (3) enter into such other agreements as may be mutually satisfactory to both parties, depending upon the factors pertaining to each individual case. In any event, the agreement made between the company and the customer shall be subject to the approval of the Georgia Public Service Commission.

(d) Actual construction of all such line extension shall be done by the company furnishing the service, at reasonable cost, subject to approval by the Commission, and such extensions shall be maintained by, and at the expense of the company. Third, it is

Ordered further: That the amendment herein provided for shall remain in full force and effect until six months after the termination of the war, unless otherwise ordered by the Commission.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Dr. Louis H. Clerf et al.

v.

The Bell Telephone Company of Pennsylvania

[Complaint Docket No. 12474, Informal Complaint Docket Nos. 11450, 11451, 11487, 10789.]

Service, § 171 — Resale of telephone service.

1. A requirement that businessmen secure service direct from a telephone company rather than from a third party, as in the case of private branch exchanges in an apartment building, is not only reasonable but vitally necessary, as the introduction of a middleman in the communication field raises many problems including that of regulation, p. 77.

Service, § 171 — Resale of telephone service —— What constitutes — Additional charge.

2. A resale of telephone service results when an apartment house owner operating a private branch exchange for tenants makes a charge for local service calls somewhat higher than the legally filed and effective tariff rates for such service, p. 77.

Service, § 171 — Resale of telephone service — Reasonableness of restriction.

3. Rules and regulations of a telephone company, pertaining to service and listings in connection with apartment house private branch exchange service, prohibiting joint use of such service except with respect to persons residing permanently and prohibiting listings of a business or professional character are reasonable and just, p. 79.

Service, § 171 — Resale of telephone service — Effective date of prohibition.

4. Present arrangements for joint use of private branch exchange telephone service in apartment houses, held to violate rules and regulations, should be continued for complainants against such rules and regulations until preparation of the next issue of the telephone directory where the complainants are presently listed in the directory and any change in telephone numbers during the life of the current issue of the directory would inconvenience them and tend to disrupt their service, p. 79.

[June 2, 1942.]

COMPLAINT *against rules and regulations restricting private branch exchange telephone service in apartment houses; dismissed.*

By the COMMISSION: In this proceeding complainants seek to restrain respondent from terminating a telephone service which complainants have been receiving for a number of years.

Samuel J. Henderson, one of the complainants, is the manager of two large apartment buildings in the city of Philadelphia and located at 1530 Locust street and 1830 South Rittenhouse Square, respectively. In each of these apartment houses the owners have had installed a private branch exchange telephone system, operated by the management, but owned and maintained by respondent. All of the complainants, with the exception of Dr. John R. Sweeney and Dr. John A. McGlinn, are tenants at one or the other of these apartments and receive telephone service by means of the private branch exchange. Drs. Sweeney and McGlinn are tenants in an apartment at 1900 Rittenhouse Square in which private branch exchange service is also furnished.

It is the contention of respondent that such an arrangement is not in accord with the provisions of its effective tariffs, on file with the Commission, which forbid the resale of telephone service by a subscriber and prohibits any directory listings, of persons not associated in business with the subscriber, which indicates the profession or business such person might be engaged in.

In support of its contention, respondent placed in evidence three exhibits covering pertinent sections of its tariffs. Section 2, Tenth Revised Sheet 2, entered as Exhibit No. 1, provides, inter alia:

"Unless otherwise indicated in this tariff, no service furnished under the regulations in this tariff shall in any case be resold."

Section 5, Fifteenth Revised Sheet 1, Exhibit No. 2, provides, inter alia:

"In connection with business service, additional listings may be of members of the partnership, officers of the corporation, agents, employees, or of a business house which the subscriber represents or owns, including a partnership or corporation under his control."

Section 9A, Third Revised Sheet 1, titled "Joint Use of Service" and entered in the record as Exhibit No. 3, provides, inter alia:

"The individual, partnership, or corporation sharing a subscriber's service is known as a 'joint user.' Joint use of service is furnished in connection with certain classes of business and residence service as indicated below:

"1. In connection with business service, when the party desiring the use of the service is not a member of the subscribing partnership, an officer of the subscribing corporation, or an agent or employee of the subscriber, or is not a business house which the subscriber represents or owns, or a partnership or corporation under the subscriber's control. . . .

"Joint use of service is not furnished in connection with private branch exchange service except to persons residing permanently or for the season at hotels, clubs, and apartment houses. In these excepted cases a monthly rate of 25 cents applies for each joint user; listings of a business or professional character are not provided."

The record reveals that the apartment building at 1530 Locust street is

15 stories in height, the first floor consisting of main lobbies and public places surrounded on the perimeter by doctors' offices. The second to fifteenth floors, inclusive, are made up of housekeeping apartments and not over 5 per cent of the entire floor space in the building is devoted to doctors' offices. Three distinct conditions exist with respect to the arrangements of the doctors who tenant this building, as follows:

1. Where the doctor's office is physically connected with his residence.

2. Where the doctor maintains an office and a residence in the building but where the two premises are not physically connected.

3. Where the doctor maintains an office in the building but does not reside therein.

It is the contention of complainants that the effective tariffs of respondent, in so far as they deny physicians, in any one or all of the above situations, the right to receive service through the apartment house private branch exchange accompanied by listings in the classified and alphabetical sections of the telephone directory properly designating their profession as physicians, is arbitrary and unreasonable and should be repealed or modified to permit such service and listings.

Complainants testified the service they are now receiving is efficient, adequate, and satisfactory. The principal advantage to the present system appears to be the secretarial feature of the service performed by the switchboard operator. It is the practice of complainants to advise the operator where they can be located during those periods of the day and night in which their respective offices are unattended. Complainants, at some length, testified as to the value of such service to themselves and to their patients. They further testified that the deletion of their names from the classified section of the telephone directory would handicap them in the practice of their profession and that refusal of respondent to continue the designation of physician or M.D., after listings of complainants in the alphabetical section of the directory is unreasonable and would result in unsatisfactory service.

Service arrangements at the other two apartment houses are similar to those existing at 1530 Locust street.

Respondent's only witness testified the issue raised here is one of long standing and is occasioned by the effort of respondent to control, so far as possible, the quality of, and the rates for, telephone service furnished the public. To this end each user of the service, other than guests in hotels and apartment houses, is requested to make his own service arrangement with the company. The witness further testified that when telephone users receive service through the medium of an extension station terminating on a private branch exchange and attended by an operator employed by the management of the hotel or apartment building in which the private branch exchange is located, the telephone company has no control over the quality of service received by them. He stated such control is vested in a middle man who is the actual subscriber to the company's service. In such cases it is the responsibility of respondent to properly install and maintain the switchboard and equipment associated with private branch exchange service and the proprietor of the apartment

building or hotel, in which this type of service is available, provides the attendant or attendants to operate the switchboard.

[1, 2] It is the contention of respondent that it is necessary in the interest of the service to the public that all businessmen, particularly physicians, secure service direct from the telephone company rather than from a third party, in this case the management of the respective apartment buildings, whose interest in providing telephone service is incidental to the operation of the apartment building. In the former case, each person applies directly to the telephone company and becomes a subscriber to service and it is respondent's operator or automatic switching unit that rings the subscriber's telephone on an incoming call. If the operator or automatic unit fails to ring the telephone or delays such action the fault lies with respondent and there is no question of where to place the responsibility. If the subscriber has a private branch exchange it is a person in his employ who operates the exchange, answers the incoming calls, and rings the extension or extensions desired. If there are delays or failures by the subscriber's employee in handling calls at the private branch exchange, the responsibility for corrective measures lies with the subscriber. In either case, as contrasted with the situation responsible for the instant proceeding, no third party is interjected between respondent and the service recipient.

Complainants in this proceeding do not receive service direct from respondent. A call from a telephone station in Philadelphia or elsewhere, and intended for one of the complainants must of necessity pass through the private branch exchange in the apartment house involved where it is received by an operator in the employ of the apartment house management, who then transmits it to complainant. The adequacy of the service on such a call is not entirely dependent on respondent as the call may have been efficiently carried by it to the private branch exchange only to have the operator at the apartment house neglect to answer the call promptly and ring the required station.

With respect to its desire to control rates for service, respondent's witness testified that the presence of a middleman such as exists in hotel and apartment house private branch exchange installations makes possible the resale of service. Respondent charges and bills the apartment house owner for local and toll service in accordance with its effective tariffs but it has no knowledge of the manner in which the apartment house owner bills persons connected to the private branch exchange or the amount of the charge. It appears respondent has two forms of contracts which are used in connection with hotel and apartment house branch exchange service. One form is executed for each such apartment house installation and contains no provision regarding charges made by the apartment house management. The other form of contract is applicable to hotels and prescribes rates which the hotel management may charge guests for local and toll service.

On cross-examination the witness, in response to a question by counsel for complainants as to possibility of preventing apartment house owners from charging their tenants rates in

excess of those provided by respondent's tariffs, testified that during the entire period respondent has had such a provision in its tariff that it is the uniform and general practice of hotel owners to make a surcharge in addition to the prescribed tariff rate on calls originated by guests. This practice is not confined to hotels alone, the witness alleging that it exists in most instances where the subscriber to service bills the service user direct.

Respondent's position briefly outlined above appears not only reasonable but in fact vitally necessary. The introduction of a middleman in the communication field raises many problems including that of regulation. Regardless of respondent's tariff provisions governing service rates the middleman can and in many instances probably does charge the service user rates considerably higher than those covered by legally filed and effective tariffs. The record in the instant proceeding, however, indicates that service presently received by complainants is entirely satisfactory and the management of the apartment houses located at 1530 Locust street and 1830 South Rittenhouse Square, has not taken advantage of its position as the subscriber to and the operator of the branch exchange services to charge exorbitant rates for service. The record shows that respondent's schedule of toll rates is adhered to in billing complainants and a 5-cent charge is in effect for local service calls. This latter charge is somewhat higher than the legally filed and effective tariff rate for such service and to this extent can be considered a resale of service. Samuel J. Henderson, charged with the management of these apartment houses and a complainant in this proceeding, testified on direct examination that ". . . These exchanges are expensive luxuries to both buildings, but they are, we consider, so essential to the buildings that we must maintain them. We charge 5 cents for local calls and charge the regular toll rates for all toll calls and we don't make enough to pay the telephone girls—sometimes we make just about enough to pay for the trunk lines on that differential of the local rate, but it requires a considerable amount of bookkeeping and billing, which I don't charge off against the telephone business, but which if I did would still further put it in the red. . . ."

From the above, it appears that at least the management of these two particular apartments has no desire to profit directly by its branch exchanges. Rather it considers such telephone service an asset which attracts and retains tenants. It is true that respondent does not retain complete control over the service and rates of these private branch exchanges but it is equally true that its measure of control would in no manner be increased by discontinuing service to the relatively few physicians involved. There is nothing in the record to show that respondent intends to discontinue its present service arrangements with hotels and apartment houses so that its problem of adequate service and control of rates will continue to exist regardless of the outcome of this proceeding.

The Commission recognizes the necessity of respondent's practice of differentiating between hotel and apartment house, particularly hotel service installations and installations in business houses, office buildings, industrial

plants, etc. As respondent's witness testified, there is no practical way to furnish telephone service to transients residing in hotels except by dealing with the proprietors of such hotels. There is, however, no reason why respondent cannot by tariff provisions and agreement regulate the resale of service by proprietors of hotels and apartment houses. Witness for respondent testified that as a matter of practical experience, respondent has since 1924 found itself utterly unable to control charges made by middlemen for telephone service and stated that it would not on its own initiative discontinue service to an apartment house because of a resale of service because "we wouldn't be able to live in Philadelphia if we did it."

The witness, in making this statement, was in all probability referring to the unfavorable reaction of hotel guests, apartment house tenants, and others which would result in the event such action was taken by respondent. The Commission does not subscribe to this belief of respondent even in the light of testimony by respondent's witness with respect to the accumulated experience of many years with this type of service. The Commission is not convinced respondent would receive unfavorable criticism either from the public, apartment house tenants, or hotel guests. On the contrary, we believe that subscribers to such service would comply with the provisions of respondent's tariff and the terms and conditions of their contracts with respondent if they realized that a violation of either would result in discontinuance of service. Even if respondent found it necessary to discontinue service for an infraction of its rules, guests and tenants of the hotel or apartment house involved would direct their criticism toward the proprietor and not respondent. It must be remembered that the resale of service affects the pocketbooks of such service users and aggressive action by respondent in adhering to its tariffs and contracts governing service of this type would be welcomed rather than criticized. Certain it is that hotel guests do not particularly relish the payment of surcharges.

[3, 4] In view of the foregoing, this proceeding becomes a question of the reasonableness of the provisions of § 9A, Third Revised Sheet 1 of respondent's tariff which provides, inter alia:

"Joint use of service is not furnished in connection with private branch exchange service except to persons residing permanently or for the season at hotels, clubs, and apartment houses. In these excepted cases a monthly rate of 25 cents applies for each joint user; listings of a business or professional character are not provided."

The above provision limits listings in respondent's telephone directory to those of a residential character and respondent prohibits any listing which indicates the service is being used for business purposes or the practice of a profession be it lawyer, engineer, or doctor. Listings carrying such designations as "M.D." and "phys." indicating medical doctor and physicians, respectively, are not permitted but respondent will accept the designation "Dr." in connection with a residence listing as it regards this designation as a title rather than a declaration of professional activities.

Witness for respondent testified that its tariff provision regarding listings in connection with private branch exchange service has been in effect since 1917 in substantially its present form but the specific prohibition against joint use listings was first placed in respondent's tariffs effective February 1, 1931, as a result of the decision of the then Pennsylvania Public Service Commission in the proceeding C. D. 8268, 1015 Chestnut Street Corp. v. Bell Teleph. Co. (1930) PUR1931A 19. A brief review of said proceeding may be desirable here as issues were raised therein that are similar to those in the instant proceeding.

1015 Chestnut Street Corporation, complainant, owned and operated a large office building in the city of Philadelphia. Complainant, under contract with respondent, obtained private branch exchange service and for a number of years furnished telephone service to its many tenants through the private branch exchange and listed such tenants in respondent's telephone directory. All bills for service were rendered to complainant and complainant included in the rental of each tenant the amount of the charge for extension stations, listings and toll charges, and a charge of 5 cents for each outgoing local call made by him.

Respondent contended that the arrangement described above was in violation of its rules and regulations covering directory listings and the resale of service and sought to terminate the service. After hearing, submission of briefs and presentation of oral argument, the Commission held respondent's rules and regulations limiting extension stations and directory listings in connection with private branch exchange service to the subscriber and those associated with him, as set forth in respondent's tariffs were reasonable and just and should be strictly enforced against all new applicants for service. It directed respondent, however, to continue its arrangements with the complainant and others enjoying similar service arrangements for a period of three years to enable them to adjust themselves to the conditions prescribed by respondent's tariffs.

In its order sustaining respondent's position the Commission criticized respondent for not enforcing its rules and regulations. In this connection the Commission in its order dated September 30, 1930, *supra,* PUR 1931A at p. 24, said:

"It also appeared at the hearing that the respondent has not strictly enforced its rules against extra listings in connection with other classes of its service, and consequently, that there may be quite a number of irregular listings in its directories. Conceding that this may be true, we do not think that the failure of the respondent to enforce a rule should influence us in determining what is the fair and reasonable rule that should be enforced. While we recognize that, in spite of the best of efforts, errors and irregularities will be found in any business, we think the evidence shows that this respondent should scrutinize more closely the conditions surrounding applicants for its service, and enforce more strictly its tariff regulations, especially in the matter of extensions and listings."

As a result of the Commission's decision in the 1015 Chestnut Street Corporation Case, respondent in an effort

to bring its practices in line with its tariffs reviewed the service arrangements and listings of approximately 15,000 business subscribers in the city of Philadelphia. The number of listings involved was greatly in excess of 15,000, as one subscriber, namely, 1015 Chestnut Street Corporation, had 100 or more listings of other persons and corporations in connection with its private branch exchange service. The review brought to light a total of 687 listings which were prohibited by respondent's regulations and these listings were discontinued. Following this review 52 additional cases were discovered which were previously overlooked or accepted as permissible listings subsequent to the general review due to the fact that certain field representatives of respondent did not regard professional listings in connection with private branch exchanges as tariff violations. All of these cases have been disposed of with the exception of the listings of complainants in the instant proceeding.

As previously stated, the principal feature, found so satisfactory by complainants, of the service as presently furnished is the secretarial service performed by the operator of the private branch exchange. With respect to this service feature and the responsibilities of respondent the Commission in its decision in the 1015 Chestnut Street Case said:

"Complainant also contended that the chief value of the telephone to the tenants on its second floor is the incoming service, and that the private branch exchange operator can and does receive calls for the tenants in their absence and notifies them thereof upon their return. We do not think that the law makes it the duty of the respondent to amend its rules in order that its patrons may have such a method of providing someone to answer their calls, but it is important to note that the respondent has a special class of service which accomplishes that purpose. This special class is called 'Secretarial Service,' and in connection therewith it is provided that each of the users (the tenants in this case) shall subscribe for one of the respondent's regular classes of service and for an extension line from his telephone to a small piece of switching apparatus called a 'secretarial board,' located somewhere on the premises and for which either the tenants or their landlord subscribe." PUR1931A at p. 25.

The record in the instant proceeding reveals that the service referred to in the Commission's decisions, namely secretarial service, is available to the complainants in the instant proceeding. In addition to this type of service there are other methods by which complainants secure adequate service as follows:

1. Each of them may subscribe for one of respondent's regular services and employ someone in his office to handle incoming calls.

2. Each may secure a cross-reference listing for the purpose of referring calls to another telephone station when his own telephone station does not answer.

3. Each may secure service through the physicians and surgeons exchange. This exchange is operated by a Mr. Boynton who has contracted with respondent for a secretarial switchboard at which he gets a signal whenever the telephone station of a professional man, who is his patron, is ringing. Re-

spondent has no interest in Mr. Boynton's business. It merely furnishes him with the secretarial switchboard for the use of which he is charged respondent's tariff rates. Separate arrangements are entered into by respondent and each individual connected by extension lines to the secretarial switchboard and each individual is a subscriber to service.

It is clear from the above that complainants here involved can secure other services adequate for their needs and that no great hardship will be experienced by them if their present service arrangements are terminated. It is well to remember that all other physicians, lawyers, engineers, and other business and professional men in Philadelphia are being furnished telephone service in accordance with respondent's rules and regulations. There is no valid reason for making an exception for the complainants. To permit respondent to continue to serve complainants as at present would be to countenance discrimation in violation of the provisions of the Public Utility Law. We shall not order or permit such discrimination to continue.

There are indications in the record that respondent has been somewhat lax in enforcing its tariff provisions regarding listings. This condition, according to respondent's witness, has been due to misinterpretations, by field representatives, of such tariff provisions. Respondent has attempted to correct this condition by revising the text of certain regulations. Even so respondent's employees did not enforce its regulations when they accepted the listings of two of the complainants in 1933. These failures by respondent are regrettable and care should be exercised to prevent recurrences.

Upon full consideration of the record, we are of the opinion and find that the rules and regulations of respondent pertaining to service and listings in connection with apartment house private branch exchange service as set forth in respondent's tariffs are reasonable and just and should be strictly enforced. In view of the fact that complainants are presently listed in the telephone directory and any change in telephone numbers during the life of the current issue of the directory would inconvenience complainants and tend to disrupt their service, we feel that the present arrangement should be continued for complainants until such time as respondent prepares its next issue of the Philadelphia telephone directory; therefore,

Now, to wit, June 2, 1942, it is *ordered*:

1. That the complaint be and is hereby dismissed.

2. That respondent continue in effect its present service arrangements until the next issue of the Philadelphia telephone directory at which time said arrangements are to be terminated.

Re Pennsylvania Railroad Company

[No. 15500.]

Interstate commerce, § 5 — Exclusive Federal regulation.

1. Legislation under which the Federal government enters a particular field supersedes any legislation by a state and denies to the state any rights or power so to legislate, p. 84.

Interstate commerce, § 70 — Powers of state — Railroad interlocking plant.

2. A state Commission has no jurisdiction to approve plans for the installation of an automatic interlocking plant which has been authorized by the Interstate Commerce Commission, p. 84.

(STUCKEY, Commissioner, dissents.)

[April 3, 1942.]

PETITION *by railroad company seeking approval of plans for interlocking plant; denied for lack of jurisdiction.*

APPEARANCES: Oscar Lindstrand, Assistant Solicitor, Chicago, Illinois, for petitioner; A. E. Gordon, State Chairman, Indianapolis, for Brotherhood of Locomotive Firemen & Enginemen; R. C. Gilbert, State Representative, Indianapolis, for Brotherhood of Railroad Trainmen; E. L. Kenney, Representative, Terre Haute, for Order of Railway Conductors; H. W. Pfenning, State Representative, Indianapolis, for Brotherhood of Locomotive Engineers; Ira M. Fisher, Assistant to President Chicago, Illinois, for Brotherhood of Railroad Signalmen of America; E. F. Stenger, Vice President, West Carrollton, Ohio, N. B. Huling, General Chairman, Pennsylvania Lines, System Division No. 17, Irvine, Pa., A. C. Stiles, General Chairman, Nickel Plate Road, Sherwick, Ohio, H. C. Green, General Chairman, New York Central Railroad, Indianapolis, for Order of Railroad Telegraphers.

By the COMMISSION, BARNARD, Commissioner: There is here presented to the Commission a situation which involves the question of jurisdiction. The petitioner, Pennsylvania Railroad Company, has for many years maintained at the crossing of its railroad with the Nickel Plate at Bunker Hill, Indiana, a manually operated interlocker. Asserting that it was in the interest both of safety and economy to do away with this manually operated interlocker and substitute in lieu thereof an automatic interlocker system, it submitted to the Interstate Commerce Commission blueprints, plans, and specifications covering a proposed automatic interlocker to be installed at Bunker Hill. The Interstate Commerce Commission approved these blueprints, plans, and specifications and authorized the installation of the automatic interlocker, same to be made in accordance with said plans, blueprints, and specifications.

On November 27, 1939, the petitioner herein, Pennsylvania Railroad Company, submitted to this Commission, blueprints, plans, and specifications covering the installation of said automatic interlocker at Bunker Hill, identical with the blueprints, plans, and specifications which it had theretofore filed with the Interstate Commerce Commission and which had, in turn, been approved by the Interstate Commerce Commission and authorized installed.

After informal discussions, a public hearing was ordered and the same was held by Chief Railroad Inspector Bailey, who subsequently thereto presented to the Commission a proposed order, in which he found that such an interlocker as proposed by petitioner, and which had been approved by the Interstate Commerce Commission, as heretofore stated, would decrease the safety at the crossing involved, and that the prayer of the petitioner should be denied.

[1, 2] The Interstate Commerce Commission, having formally approved the said interlocker and its installation, and having authorized the petitioner, Pennsylvania Railroad Company, to install the same, the question which presents itself to this Commission in this cause for its determination is this: The Interstate Commerce Commission having assumed jurisdiction and authorized the installation, is there any jurisdiction in this Commission in the premises? If that question is decided in the negative, the case is disposed of as far as we are concerned and there is left no necessity for considering the question as to whether or not the interlocker as proposed, would, or would not be in the interest of public safety.

In order to determine this jurisdictional question, resort will be had to Federal legislation and the decisions of the United States Supreme Court, for the purpose of, in turn, determining whether or not enactments of the general assembly of the state of Indiana and rules promulgated by this Commission pursuant to such enactments having to do with interlockers have been superseded by congressional enactments.

The 75th Congress at its first session, passed an act, commonly referred to as the "Signal Inspection Act," the title of which act reads as follows:

"An act to require certain common carriers by railroad to install and maintain certain appliances, methods, and systems intended to promote the safety of employees and travelers on railroads and for other purposes."

This act amends § 26 of the Interstate Commerce Act as amended (49 USCA § 26).

Paragraph B of this amendment contains the following provision:

"(b) That the Commission may, after investigation, if found necessary in the public interest, order any carrier within a time specified in the order, to install the block signal system, interlocking, automatic train stop, train control and/or cab-signal devices, and/or other similar appliances, methods, and systems intended to promote the safety of railroad operation, which comply with specifications and requirements prescribed by the Commission, upon the whole or any part of its railroad such order to be issued and published a reasonable time (as determined by the Commission)

in advance of the date of its fulfillment."

Paragraph (c) provides as follows:

"Each carrier by railroad shall file with the Commission its rules, standards, and instructions for the installation, inspection, maintenance, and repair of the systems, devices, and appliances covered by this section."

The act also authorizes the Commission to inspect the system to determine whether it is in proper condition to operate and whether it provides adequate safety and any failure of the system to function properly must be reported to the Commission. Another provision of the act requires that the Commission see to it that its orders and regulations are carried out and penalty is provided for any infraction of the statute or orders of the Commission in regard thereto.

The 1920 Act of Congress, of which this 1937 Act is an amendment, applies only to automatic train stop or train control devices. It did not include within its terms "Interlocking Devices."

It will therefore be seen that the 1937 Act, with which we are concerned here, extends the powers of the Interstate Commerce Commission as theretofore existing under the 1920 statute, and confers upon that Commission the same authority over interlocking devices at railroad crossings that it theretofore had with train control or block signal systems. The 1937 Act also adds under paragraph (d) a provision for the inspection and testing of such system by the Interstate Commerce Commission.

It would seem therefore that it was the intention of Congress by the passage of the 1937 Act, which is an amendment to the Interstate Commerce Law, to give to the Interstate Commerce Commission the power of regulating block signal systems or interlocking devices such as is in question here. It has been pointed out by the opinion of the attorney general of this state, that

"the statute is much like the safety appliance and the boiler inspection law which have been held to give to the Federal Commission exclusive authority over railway equipment, even as to those safety provisions which ordinarily fall under the police power of the state." Pennsylvania R. Co. v. Pelsor (1929) 90 Ind App 111, 168 NE 249; Southern R. Co. v. Indiana R. Commission (1915) 236 US 439, 59 L ed 661, 35 S Ct 304.

In the case of Napier v. Atlantic Coast Line R. Co. (1926) 272 US 605, 71 L ed 432, PUR1927B 537, 544, 47 S Ct 207, the court held that the Boiler Inspection Act of Congress herein referred to extended to the whole subject of equipping locomotives and cars with safety appliances and that such act superseded any state regulation on the same subject, and on page 613 of the opinion, the court spoke as follows:

"We held that state legislation is precluded, because the Boiler Inspection Act, as we construe it, was intended to occupy the field. The broad scope of the authority conferred upon the Commission leads to that conclusion. Because the standard set by the Commission must prevail, requirements by the states are precluded, however commendable or however different their purpose."

The late Mr. Justice Lamar, in the last paragraph of his opinion in the

case of Southern R. Co. v. Indiana R. Commission, *supra,* expresses the test which seems to the writer to be properly applicable here, as follows:

"The test, however, is not whether the state legislation is in conflict with the details of Federal law or supplements it, but whether the state had any jurisdiction of a subject over which Congress had exerted its exclusive control."

As said by Justice Stone in the case of California v. Thompson (1941) 313 US 109, 116, 85 L ed 1219, 39 PUR(NS) 55, 61 S Ct 930:

"The commerce clause in conferring on Congress power to regulate commerce, does not wholly withdraw from the states the power to regulate matters of local concern *with respect to which Congress has not exercised its power,* even though such regulation affects interstate commerce."

In another recent case in which the opinion was written by Justice Stone and in which the question was squarely presented as to whether or not a state regulatory body pursuant to state legislation could enact rules and regulations governing railroads, the Chief Justice said that there were many cases of local interest where it was not feasible for Congress to enter the field that would permit the states to have control. He repeated this position in his opinion but in every instance seemed to be careful to say that the states would have the control only where Congress had not entered the field. It would seem therefore to be the law that if the paramount authority, which, of course, is the Federal government, has entered a particular field and legislated, that such legislation supersedes any legislation by a state and denies to the state any right or power to so legislate, and consequently, if pursuant to empowering legislation so to do, the Interstate Commerce Commission has promulgated rules and regulations covering interlockers and the installation thereof, it has thereby superseded the Pubic Service Commission of Indiana and such action by it denies to the Public Service Commission of Indiana, any authority over such interlockers.

The Commission for the foregoing reasons is of the opinion that it has no jurisdiction in this cause and that therefore the petition herein should be dismissed and it will be so ordered.

It is therefore *ordered* by the Public Service Commission of Indiana that the petition of the Pennsylvania Railroad Company herein should be and the same is hereby dismissed for want of jurisdiction.

Eichhorn and Barnard, concur: Stuckey dissents.

STUCKEY, Commissioner, dissenting: It is with great concern to me that the Commission has renounced jurisdiction in this case. It has removed itself from a sphere of regulation rather broad and all inclusive in scope, in which heretofore a very beneficial service has been rendered, especially from the standpoint of safety to the railroads and the public as well. The field of regulation to which I refer is covered principally by the following statutes:

The Public Service Commission has pending before it petitions which involve the following Burns' Indiana Statutes, Annotated, 1933:

"Section 10–3909, which provides in substance a penalty for moving

trains on steam railroads, or interurban cars, or trains on electric railroads over railroad crossings at grade without stopping unless same is protected by a system of interlocking systems approved by the Public Service Commission;

"Section 55–629, which provides in substance that whenever interlocking or other safety devices are constructed and maintained, and have the approval of the Public Service Commission, trains or cars may move over railroad crossings at grade without stopping, any law or the provisions of any law now in force to the contrary notwithstanding;

"Section 55–626, which provides in substance the Public Service Commission shall have authority to order the carrier to install a system of interlocking, or other works or fixtures, at a railroad grade crossing or at any swing or draw bridge;

"Section 55–101, which provides in part the Public Service Commission shall supervise the installation and maintenance of interlocking plants at interurban railroad crossings at grade in this state.

"Section 55–1254, which provides in substance that steam railroads and interurban railroads in this state shall install and maintain a block system approved by the Public Service Commission unless the Commission relieve the carrier of such installation;

"Section 55–130, which provides in substance that the Commission must keep itself informed as to the condition of railroads and railways and the manner in which they are operated, with reference to the security and accommodation of the public;

"Section 55–130(b) which, among other things, provides that when any carrier in this state does not keep its road or equipment in proper condition and repair for the health and safety of its employees or the public, . . . it shall be the duty of the Commission to cause such investigation to be made as it may deem necessary . . . and shall also recommend such reasonable changes and improvements, etc., as are, in the opinion of the Commission, necessary to remedy such faults, neglects, requirements, or defects."

On January 28, 1938, in response to a request made by the Commission, the attorney general of Indiana rendered an opinion as referred to hereinabove. Here is a significant quotation from that opinion:

"Each case that comes before you, where there is doubt as to whether your Commission or the Federal authority is to go forward, will have to be taken up and decided separately on its merits."

After the rendition of that opinion by the attorney general, an interlocker case, substantially similar to the Bunker Hill matter, came to the attention of the Commission.

On July 5, 1938, the Wabash Railway Company, Norman B. Pitcairn and Frank C. Nicodemus, Jr., receivers, filed a petition with the Public Service Commission, docketed under Cause No. 13351, for approval to change the manually operated interlocking plant with derails at Dillon, Indiana, where the Wabash railroad intersects the New York, Chicago and St. Louis Railroad, to an automatically operated interlocking plant without derails. The cost of that change was estimated at $18,480.

After thorough investigations made

by the Railroad Inspection Department and public hearing, the Commission approved an order denying the petition on February 17, 1939.

Thereafter, on February 21, 1940, petitioner filed a petition for rehearing which was denied March 1, 1940.

On July 26, 1939, the Interstate Commerce Commission rendered its decision granting the petition, but, in spite of that fact, the change in interlocker equipment at Dillon, Indiana, to the knowledge of this Commission, was not made, nor was the question of jurisdiction raised before this Commission or in any court.

Other similar cases have been handled by this Commission in the same way. Orders have been made granting petitions and denying them since the passage by Congress of the said amendment to § 26 of the Interstate Commerce Commission Act, 49 USCA § 26, relating to interlockers, block signals, and other devices. Each case has been decided by the Commission on its merits in conformity with Indiana statutes, with the administration of which this Commisison is charged.

In the instant case, the evidence shows, in substance, that the interlocking plant is located within the town of Bunker Hill with rather hazardous approaches along the Pennsylvania tracks which cross those of the Nickel Plate Line. Passenger trains at that point move at a speed as fast as seventy miles an hour and freight trains forty miles an hour. Sworn testimony was given by engineers of the Pennsylvania Railroad, who operate trains through Bunker Hill, that the elimination of the present manually operated interlocker and derails, and the substitution of an automatic plant without derails, would, in their opinion based upon years of experience as railroad engineers, decrease the safety of operation of trains. These engineers further testified that they would not have the feeling or assurance of safety for themselves and the passengers that they now have in the operation of trains under the manual interlocker and derail system of control.

The state, it would appear, has exercised its police power through the following and kindred statutes as hereinabove set out:

"Section 10–3909, Burns' Indiana Statutes, Annotated, 1933, which provides in substance a penalty for moving trains on steam railroads, or interurban cars, or trains on electric railroads over railroad crossings at grade *without stopping* unless same is protected by a system of interlocking systems *approved by the Public Service Commission.*" (Italics supplied.)

I do not believe it could be successfully maintained that the legislation by Congress herein considered relating to interlockers, etc., supersedes that statute; then, also, the Commission has this statute to reckon with:

"Section 55–130(b) which, among other things, provides that when any carrier in this state does not keep its road or equipment in proper condition and repair for the health and safety of its employees or the public, . . . it shall be the duty of the Commission to cause such investigation to be made as it may deem necessary . . . and shall also recommend such reasonable changes and improvements, etc., as are, in the opinion of the Commission, necessary to remedy such faults, neglects, requirements, or defects."

In fact, all of the state statutes cited

by me would, as I see it, appear to be a direct exercise of the state's police power which has not been taken away by the said Federal Act.

Just where my duty under those state statutes begins and where it leaves off, in the face of the Federal Act, constitutes a question which creates doubt in my mind. I believe, however, that as a state Commissioner, I should unquestionably resolve that doubt in favor of state jurisdiction.

The Public Service Commission's functioning has been very effective as to interlockers and allied subjects of railroad regulation over the 5-year period since Congress enacted the amendment to § 26 of the Interstate Commerce Commission Act. During that time there has been no friction between the State Commission and the Interstate Commerce Commission in State and Federal administration of their respective statutes. Harmony has prevailed even though there have been a few denials of petitions by the Indiana Commission which the Interstate Commerce Commission granted, and in which cases the railroads affected have abided by the orders of the former.

These facts afford the foundation for my opinion that the Public Service Commission of Indiana should hold fast to the jurisdiction conferred upon it by Indiana statutes until such time as that jurisdiction has been wiped out by a court of record, or by a specific statute.

NEW YORK DEPARTMENT OF PUBLIC SERVICE, STATE DIVISION, PUBLIC SERVICE COMMISSION

Re New York & Richmond Gas Company et al.

[Case No 10684.]

Merchandising and jobbing, § 2 — Jurisdiction of Commission — Special charges — Repair and maintenance of appliances.

1. The Commission has no jurisdiction over charges by public utility companies for the repair and maintenance of appliances located on consumers' premises, p. 92.

Service, § 333 — Repair and servicing of appliances.

2. A gas company is under no duty, statutory or otherwise, to inspect, repair, or maintain customers' appliances, which repair and servicing is a competitive field, p. 92.

Commissions, § 41 — Jurisdiction — Nonutility activities.

Discussion of the lack of Commission jurisdiction over matters not affecting directly the service furnished and the rates charged, such as rates of pay for labor employed by utility companies, labor policies, sale of electrical appliances, and rental of appliances, p. 92.

Service, § 333 — Inspection of equipment and appliances.

Statement that there is no continuing obligation on the part of a gas corporation to inspect the equipment and appliances on a customer's premises, p. 93.

[April 14, 1942.]

PROCEEDING *on motion of Commission as to rules, regulations, practices, and charges made in connection with repair and maintenance of consumers' gas applicances; investigation closed.*

APPEARANCES: Gay H. Brown, Counsel (by Raymond J. McVeigh, Assistant Counsel), for the Public Service Commission; W. C. Chanler, Corporation Counsel (by Harry Hertzoff, Assistant Corporation Counsel), New York city, for the city of New York; Charles G. Blakeslee, New York city, General Counsel for Long Island Lighting Company, Queens Borough Gas & Electric Company, Nassau & Suffolk Lighting Company, Long Beach Gas Company and Kings County Lighting Company; Whitman, Ransom, Coulson & Goetz (by Jacob H. Goetz and Cameron F. MacRae), New York city, Attorneys for Consolidated Edison Company, Westchester Lighting Company and New York & Richmond Gas Company; Cullen & Dykman (by Jackson A. Dykman), Brooklyn, Attorneys, for Brooklyn Union Gas Company; Arthur A. Fink, New York city, for Local 101, Utility Division, Transport Workers Union, C.I.O.; George Curran, representing the Greater New York Industrial Union Council; Edward Lowe, President of Westchester Gas and Electric Appliance Dealers' Association; Aaron L. Greenberg, Yonkers, appearing in his own behalf.

VAN NAMEE, Commissioner: This is a proceeding instituted on motion of the Commission to investigate certain charges made by utility companies for the repair and maintenance of appliances located on consumers' premises. Hearings were held on January 26 and February 9, 1942, 160 pages of testimony were taken and 26 exhibits received in evidence.

The following nine companies were represented by counsel at the hearing:

(1) Consolidated Edison Company, Inc.
(2) Queens Borough Gas & Electric Company.
(3) Long Island Lighting Company.
(4) Nassau & Suffolk Lighting Company.
(5) Kings County Lighting Company.
(6) Long Beach Gas Company.
(7) Brooklyn Union Gas Company.
(8) Westchester Lighting Company.
(9) New York and Richmond Gas Company.

The Brooklyn Borough Gas Company, although not represented at the hearing, transmitted a letter to the Commission which described generally its policy in repairing and maintaining appliances.

Facts

In the later part of 1941, companies in the Consolidated Edison Company of New York System notified its consumers by mail that beginning January 1, 1942, a minimum charge of $1.50 would be made by the company for responding to consumers' calls for servicing or repairing other than certain specified equipment. This notice also stated that if the work to be per-

formed required more than one-half hour of the service man's time, a charge of $1 would be made for each half hour or fraction thereof.

The companies in the Long Island Lighting Company System had notified its consumers in 1939 that charges would be made for the repair of certain specified customer-owned appliances located on customers' premises.

The following table shows the rate to be charged for this service and the date this charge went into effect:

Company	Minimum Charge Rate	Minimum Charge Period	Charge for each additional ½ hour	Effective Date of Service Charge Policy
(1) Consolidated Edison Co.	$1.50	½ hr.	$1.00	Jan. 1, 1942
(2) Queens B. G. & E. Co.	1.50	1 hr.	.50	March 1, 1939
(3) Long Island Ltg. Co.	2.00	1 hr.	.50	April 1, 1939
(4) Nassau & Suffolk Ltg. Co.	2.00	1 hr.	.50	April 1, 1939
(5) Kings County Ltg. Co.	1.00	½ hr.	.60	Feb. 1, 1942
(6) Long Beach Gas Co.	2.00	1 hr.	.50	March 1, 1939

There was testimony by officials of the various companies to the effect that the charge set forth above for service will be only for work done on customers' appliances. Mr. Jaffe, vice president of the Consolidated Edison Company of New York, Inc., testified that if a customer calls and notifies the company that something is wrong with his gas supply, the company will continue as it has in the past to send service men to the customer's premises. If the service man finds that the trouble is not with the company's lines but with the customer's appliances, the customer will be advised that there is a charge for any work done on the appliances. He also testified that the work done by the repair man is only done when authorized by the customer and that the customer may, if he chooses, have an outside plumber or mechanic do the work at his own expense and if this is done, of course, the employees of the utility company will do no work on the customer's premises.

Officials of the various companies testified that the following factors were taken into consideration in arriving at the reasonable charge for the services on customers' premises:

1. Basic pay of service man per hour
2. Unproductive time
   a. Traveling time
   b. Unproductive calls; no one home
   c. Sickness, vacation and holidays
3. Transportation costs
4. Labor benefit taxes such as Social Security taxes, etc.
5. Supervision
6. Building rent

In general the exhibits and the testimony of the witnesses indicate that charges are not usually made for the

servicing of water heaters and house-heating furnaces, and for any appliance covered by warranties in the sales contract or by maintenance contracts.

Mr. Jeffe testified that in addition to the new service charge policy the company had established a new policy with respect to the servicing of electrolux gas refrigerators. Previously consumers owning gas refrigerators could obtain contracts from the company in which the company agreed to supply both the labor and parts necessary for the maintenance of the refrigerator for one year at a flat rate. The existing contracts still in effect, which apply to both labor and parts, will be allowed to continue until their normal expiration dates but will not be renewed. The contracts issued since January 1, 1942 only provide for the labor necessary to maintain the refrigerator with the customer bearing the cost of any necessary parts.

The Brooklyn Union Gas Company, Westchester Lighting Company, New York and Richmond Company, and the Brooklyn Borough Gas Company do not make service charges of the nature being investigated in this proceeding and there has been no change in this policy which has been the established policy and practice for many years.

From the testimony in the record and the exhibits examined by me it is clear that the charges made for services rendered by the employees of the utility company have no relation to the rendering of utility service.

Jurisdiction

[1, 2] The primary question to be considered by the Commission is whether or not this Commission has jurisdiction over the type of services rendered and the charges therefor. If the Commission has jurisdiction over the type of services involved in this proceeding, then the reasonableness of the practices and the reasonableness of the charges for the service rendered is subject to this Commission's orders. Conversely, if the Commission has no jurisdiction over the type of service involved in this investigation, evidence and comment by me on the charges and services rendered would be gratuitous.

The Commission has consistently held it had no jurisdiction over rates of pay for labor employed by the companies as such, but if the policies and practices of the company directly affected the service being furnished or the rates being charged, the Commission has jurisdiction over complaints against such practices or rates and should investigate as to these particular allegations.

In Customers v. Brooklyn Edison Co. Case No. 7699, decided March 28, 1933, PUR1933C 113, 114, the Commission said: "The Commission has no jurisdiction over the labor policies of the Brooklyn Edison Company or of any other utility, unless and until it be shown that such policies and practices directly affect the service being furnished or the rates being charged, in other words, that service and rates being complained against, the Commission has jurisdiction and it is its duty to investigate as to those particular allegations."

In Re New York Edison Co. for approval of mergers, P.S.C. Cases Nos. 8849, 8890 and 8891, decided December 16, 1936 (1 NYPSCR 797, 807, 808), the Commission held:

"The Commission has been asked

to impose conditions as to employment matters in any order permitting the merger of these companies that it decides to issue. Attempts have been made at various times to induce the Commission to pass upon the actions of the companies and to issue orders directing the course they should follow. We have uniformly adhered to the only course permissible under the law, namely, that as the Commission has not been given jurisdiction over labor matters, it will not undertake to direct the actions of a company in this direction.

"When the Public Service Commission Law was enacted in 1907, the question of the powers of a state Commission over labor matters was considered; it was decided at that time that no such powers would be conferred upon a regulatory body and it is impossible for us to extend our jurisdiction. Indeed, the legislature included in the statute a direct prohibition against any recommendations being made by any member of the Commission to any public utility under its jurisdiction regarding the employment of any person."

The Commission has also held it had no power to compel the companies to engage in the sale of electrical appliances. Where the companies did so the Commission has held that its jurisdiction did not extend to the practices, charges, or rates under which such appliances were sold, but only extended to prescribing the method of accounting for the revenues and expenses of such business. Luckey, Platt & Co. v. Central Hudson Gas & E. Corp. PUR1932B 165; Re Uniform System of Accounts for Electric and Gas Corporations (1932) PUR1933B 448, 458.

There is no continuing obligation on the part of a gas corporation to inspect the equipment and appliances on a customer's premises. (Schmeer v. Gas Light Co. [1895] 147 NY 529, 541, 42 NE 202) and (Pernick v. Central Union Gas Co. [1918] 183 App Div 543, 170 NY Supp 245, aff'd [1920] 228 NY 594, 127 NE 920; Reid v. Westchester Lighting Co. [1923] 236 NY 322, 140 NE 712; Re Interruptions and Shortages in Gas Service [1918] 9 PSCR [1st Dist NY] 699, 719, 720). The Reid Case states: ". . . The gas company, of course, was obligated, *before* it turned on the gas, to know that the pipes in the house were in proper condition and that the gas, when turned on, would not escape. Beyond that, unless it assumed control of the pipes in the house, liability in the absence of notice, did not attach to it for escaping gas. *The pipes in the house were owned and controlled by the owner of the building and it was up to him, as the landlord, or his tenant, to keep them in repair, and, if gas escaped, to notify the gas company.*"

In Re Interruptions and Shortages in Gas Service, *supra*, at p. 721 the memorandum states: "The gas corporations are not required by any express provision of statute or order of the Commission to install or inspect piping, fixtures, or appliances in homes or other buildings."

The Consolidated Edison Company's Rules and Regulations contain the following provision (PSC No. 3 —Gas, Third Revised Leaf No. 6, Subdiv. P of the General Rules and Regulations):

"Repairs. Leakage of gas. All repairs to the customer's equipment shall be made by the customer and he shall maintain the equipment in the condition required by the state, municipal, and insurance authorities having jurisdiction and by the company. The customer shall give immediate notice to the company of any leakage or escape of gas."

The first six companies herein enumerated have voluntarily entered this field of repairs and servicing and in various forms have established fixed rates and charges for the repair or upkeep or both of consumers' appliances and these rates and charges are applied when requested by the customer, whether the appliance in question was purchased from the company or from an independent dealer. It is undoubtedly in the interest of the company to provide such service. The repair or servicing of an electrical or gas refrigerator is often beyond the knowledge or ability of the average layman and in some sections in the metropolitan district, it is probably impossible to have repairs or maintenance by any but a company employee. In general, however, the repair and servicing of appliances is a competitive field and it is clear that the company is under no duty statutory or otherwise to inspect, repair, or maintain the customers' appliances. In Just v. Consolidated Gas Co. PUR1918C 390, 392, 393, the Commission for the First District dismissed a complaint against charges made by the company for labor and materials in connection with the resetting of rented gas ranges, saying:

". . . In the manufacture, sale, and distribution of gas, a gas corporation has a monopoly the exercise of which is, and should be, subjected to regulation in the interest of the consuming public and the investors in the enterprise. But, in the sale of gas appliances—be they house mains, ranges, or gas fixtures—the gas companies are not protected in any monopoly, and the trade therein is subject to all conditions of competition which prevail in the marketing of other commodities. The furnishing and sale of gas ranges is not a duty imposed by law upon gas corporations, and no power has been conferred by the legislature upon the Commission to regulate an undertaking by the company in that business. Unless the acts of the gas company in respect to its appliance business affect the performance of its duties imposed by law and which the Commission has power to regulate, the Commission would not now be authorized to interfere with the acts and practices of the company."

The opinion also called attention to the fact that, although the Commission had previously assumed to prescribe regulations in regard to the period of rental of ranges (Case No. 1915), nevertheless, when the Commission's jurisdiction was challenged, the order was abrogated.

In Re City Ice & Fuel Co. (1940) 260 App Div 537, 37 PUR(NS) 218, 23 NY Supp (2d) 376, my memorandum reported (1939) in 29 PUR (NS) 193, 201, I stated:

"The company is not required by the Public Service Law or any other statute to sell automatic refrigerators to its customers. The use of such refrigerators promotes the sale of gas or electricity. If the Commission could regulate the sale price of refrigerators, it would follow that it has

the power to regulate the sale price of all gas or electric appliances. The Commission has no such power. In the sale of appliances the company is not protected by any monopoly as in the sale of gas or electricity. They are subject to all the conditions of competition which prevail in the marketing of other commodities.

"In the sale of refrigerators, the present campaign is in competition with the complainant, the City Ice and Fuel Company, which itself markets nonmechanical refrigerators for the use of its product. The sale of such refrigerators is not a duty imposed upon the company and no power has been conferred by the legislature upon the Commission to regulate an undertaking by a company who engages in such business. *Unless the acts of the company in respect to its appliance business affect the performance of its duties, imposed by law and which the Commission has power to regulate, the Commission is not authorized to interfere with the acts and practices of the company in that regard.* No claim is made here that by reason of the present campaign the company cannot and does not perform the duties imposed upon it by law."

In affirming the determination of the Commission in the City Ice and Fuel Company Case, *supra*, 37 PUR (NS) at p. 223, the appellate division, third department, said:

"The sale of refrigerators even when made by a public utility is not the rendition of electric service. There is nothing in the Public Service Law which requires that the prices or terms of sale of appliances be filed with the Public Service Commission."

The Commission's powers in relation to the sale of appliances are well defined. In the absence of a duty to maintain and repair consumers' appliances and the existence of free competition in the field of these activities, I am led to the conclusion that the charges made by the company for the servicing of appliances are not subject to regulation by the Commission and are not required to be embodied in the companies' filed rate schedules. This conclusion has been reached in other jurisdictions. In Re St. Louis County Gas Co. PUR1919B 568, the Missouri Public Service Commission disapproved the inclusion in the company's filed rate schedule of charges for the maintenance and repair of customers' gas appliances and equipment, saying, at pp. 570, 571:

"The point to be decided at the outset is whether the foregoing schedule of charges is a schedule relating to rates, charges, or service, or a rule governing a general privilege or facility allowed by the respondent as a public utility within the meaning of subsection 12, § 69, Public Service Commission Law.

"It appears that all the charges to be made in pursuance of the foregoing schedules are for work done by the respondent at the request of the customers upon the customers' apparatus, appliances, or equipment used in consuming gas and located on the customers' premises. The obligation of the respondent is to furnish gas of standard quality and quantity to the consumers' premises, including a meter for measuring the quantity of gas consumed. The respondent recognizes its obligation to adjust the equipment of consumers without charge where such adjustment may be necessary, be-

cause of the quality of the gas furnished. See paragraph (a) of schedule.

"The consumers furnish the equipment or apparatus used in consuming gas, and the service pipes, upon their own premises. *The consumer is at liberty to make repairs upon his apparatus or have the work done by others than the respondent. The respondent has not a monopoly of making repairs upon consumers' equipment, as it has of furnishing gas to the consumers. The making of repairs to the consumers' equipment is not a part of the utility business, as anyone may engage in it without regulation or supervision from this Commission.*

"The Commission holds that the foregoing schedule filed by the respondent, containing charges for attention to customers' premises complaints, is not such a rule or regulation of a rate, service, privilege, or facility as contemplated by subsection 12, § 69 of the Public Service Commission Law, and hence it has no place in the files of this Commission as part of the schedules or rules of respondent for furnishing gas to its consumers. This ruling is in harmony with a recent ruling of the Illinois Public Utilities Commission in the case of Public Utilities Commission v. Commonwealth Edison Co. PUR1918F 109. The Illinois Commission held:

" 'It may be said that the public utility business of an electric public utility is to furnish electricity to customers, as a rule under monopolistic conditions, and to collect reasonable charges therefor. In so far as the public utility departs from such methods of business, especially where, as in this case, it branches off into competitive undertakings in which private business enterprises not under the Commission's control are engaged, it ceases to be engaged in a public utility business, and hence is not subject to control or regulation by the Commission.

" 'The repair service in question, being performed on apparatus owned by the customer on his own premises, and being rendered in competition with nonpublic utility concerns, appears to be clearly outside of the public utility business function of the Commonwealth Edison Company, respondent herein; and while, of course, it is the obligation of said company to make all necessary repairs on its own plant and equipment, to read and test meters, and to be ready at all times to furnish service to its customers,—the Commission is of the opinion, and so finds, that the Commonwealth Edison Company in performing the repair service and in making the charge in question is not in the exercise of its public utility business function, and that, therefore, the service and charge involved are not subject to the control of and regulation by the Commission.'

"The company may charge its consumers for doing the work specified in the proposed schedule, but the Commission does not undertake to regulate the amount of the charge, and the statute does not require a schedule of the amount of such charges to be filed with the Commission.

"It follows that the respondent should not have been permitted to file its schedule as proposed for charges for attention to customers' complaints; and the order suspending the schedule will be set aside and the schedule stricken from the files."

Conclusion

The Commission has no jurisdiction over the particular charges herein involved. There is therefore no necessity in this proceeding of determining whether the charges made by the companies are fair and reasonable, nor is there necessity for determining the point raised by the Consolidated Edison Company and the Long Island Company as to the power of the Commission under the wording of the order in this matter to make a final order requiring the filing of such schedules. The investigation should be closed. An appropriate order is hereunto attached. [Order omitted.]

UNITED STATES CIRCUIT COURT OF APPEALS, NINTH CIRCUIT

Pacific Gas & Electric Company

v.

Securities and Exchange Commission

[No. 9918.]

(127 F(2d) 378.)

Intercorporate relations, § 14.1 — Control of subsidiaries — Holding Company Act — Construction.

1. Section 2(a) (8) of the Holding Company Act, 15 USCA § 79b (a) (8), providing that the Commission shall declare that an applicant is not a subsidiary company if it finds, among other things, that the management or policies of the applicant are not subject to a controlling influence by a holding company, is to be construed as meaning "susceptibility to control" rather than "actual and existing control," p. 101.

Statutes, § 11 — Interpretation — Congressional debate.

2. A Senator's argument in congressional debate on the Holding Company Act must be disregarded when contrary to the plain meaning of the act, p. 101.

Intercorporate relations, § 19.11 — Holding company regulation — Subsidiary status — Burden of proof.

3. A company seeking a declaration that it is not a subsidiary of a holding company, pursuant to § 2(a) (8) of the Holding Company Act, 15 USCA § 79b (a) (8), must present substantial evidence which convinces the Commission as to the facts enumerated by the statute as the basis for a finding that the company is not a subsidiary, p. 102.

Appeal and review, § 28.1 — Scope of review — Federal Commission decision.

4. Congress entrusted the Securities and Exchange Commission, not the courts, with the power to draw inferences from the facts in administering the Holding Company Act; and, regarding the inferences made, the only question which a reviewing court may consider is one of law, that is, whether the inferences made were reasonable, p. 105.

Intercorporate relations, § 14.1 — Controlling influence over subsidiary — Past practices.

5. A finding that a company in which a holding company has a substantial stock holding is not subject to a controlling influence within the meaning of § 2(a) (8) of the Holding Company Act, 15 USCA § 79b (a) (8), is not compelled by the fact that the holding company has not in the past dominated the company, p. 105.

Intercorporate relations, § 19.21 — Question for Commission decision — Finding under Holding Company Act — Subsidiary status.

6. What is "necessary or appropriate in the public interest" within the meaning of § 2(a) (8) of the Holding Company Act, 15 USCA § 79b(a) (8) relating to a Commission declaration that a company is not a subsidiary if it is found that certain facts do not exist so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations imposed by the Holding Company Act, is a question for the Commission to decide, p. 106.

Intercorporate relations, § 19.21 — Holding company regulation — Subsidiary status.

7. Section 2(a) (8) of the Holding Company Act, 15 USCA § 79b (a) (8) providing for a declaration that an applicant is not a subsidiary company if it finds (1) that the applicant is not controlled by a holding company; (2) that the applicant is not the medium of control of another company by a holding company; and (3) that the management or policies of the applicant are not subject to a controlling influence, so as to make it "necessary" or appropriate that the applicant be regulated, is to be construed as permitting the Commission to deny the application, even though it finds that none of the three conditions are present, on the ground that there is a necessity or appropriateness that the act be held to be applicable to the applicant under the necessity clause, p. 106.

Appeal and review, § 18 — Scope of review — Questions not presented to Commission.

8. The court, in reviewing an order of the Securities and Exchange Commission, cannot consider constitutional questions suggested if it does not appear that such questions were presented to the Commission, p. 108.

(GARRECHT, C. J., dissents.)

[April 14, 1942.]

PETITION *to review and modify or set aside an order of the Securities and Exchange Commission denying a declaration that a company is not a subsidiary pursuant to § 2(a) (8) of the Holding Company Act; petition denied.*

APPEARANCES: Herman Phleger and Wm. B. Bosley and Robert H. Gerdes, both of San Francisco, Cal. (Brobeck, Phleger & Harrison, of San Francisco, Cal., of counsel), for petitioner; Chester T. Lane, General Counsel, Securities and Exchange Commission, Christopher M. Jenks, Assistant General Counsel, Lawrence S. Lesser and E. M. Calkin, Attorneys, all of Washington, D. C. (Arnold R. Ginsburg, Eugene Gressman, and Julian M. Meer, all of Washington, D. C., of counsel), for respondent.

Before Garrecht, Haney, and Stephens, Circuit Judges.

HANEY, C. J.: The present cause arises on a petition to review and modify, or set aside, an order of the Securities and Exchange Commission.

Pacific Gas and Electric Company, petitioner, hereafter called the company, is a California corporation, and was organized in 1905. On March 23, 1912, the Public Utilities Act of California became effective, St. 1911, Ex. Sess., p. 18, and since that date, the company could issue securities only with the approval of the Railroad Commission of California. All its securities now outstanding, have been authorized by the Railroad Commission except 15 per cent of its common stock which was issued prior to March 23, 1912. All the company's public utility properties are located in, and its business is conducted in, the state of California.

The Public Utility Holding Company Act of 1935, 15 USCA § 79 et seq., hereafter called the act became effective on August 26, 1935, Section 2(a)(8) of the act, 15 USCA § 79b (a)(8), defines a "subsidiary company" as meaning:

"(A) Any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company . . . unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company; and

"(B) any person the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this chapter upon subsidiary companies of holding companies.

"The Commission, upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through one or more intermediary persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a

controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this chapter upon subsidiary companies of holding companies. The filing of an application hereunder in good faith shall exempt the applicant from any obligation, duty, or liability imposed in this chapter upon the applicant as a subsidiary company of such specified holding company until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application."

Section 79f makes it unlawful for a subsidiary company of a registered holding company to issue or sell any of its securities except with the approval of the Commission.

On November 29, 1935, the company filed an application with the Commission for an order declaring that it was not a subsidiary company of the North American Company, a registered holding company under the act which has held 17.71 per cent of the company's voting stock since June 12, 1930. On September 4, 1940, the Commission directed a hearing upon such application, and on October 10, 1940, directed that such hearing commence, and it did commence, on November 12, 1940. The hearing concluded on January 16, 1941. The trial examiner on April 22, 1941, filed his report recommending that the company's petition be granted.

On July 1, 1941, the California Railroad Commission authorized the company to issue and sell 400,000 shares of its 5 per cent first preferred stock, and it commenced to sell them after July 8, 1941.

On September 10, 1941, the Commission entered an order denying the company's application. At that time the company had sold 199,433 shares of the stock above mentioned. On September 18, 1941, the company filed a petition in this court to review and modify or set aside the order of the Commission, and for a stay pending such review. On the same date it filed an affidavit in support of the stay. On the following day, this court made an ex parte order staying and suspending the order and the "operation" thereof, reciting "that by § 24 of the Public Utility Holding Company Act of 1935, 15 USCA § 79x, said petitioner is entitled to a review of said order, and that the court may stay the operation of said order pending review thereof."

On October 17, 1941, the Commission moved to vacate so much of the order of September 19, 1941, as provided for the stay and suspension, on four grounds: (1) the Commission's order is not susceptible of being stayed because of the act, the company is a subsidiary company, and to stay the order is to have no effect other than to leave the company in the status in which the statute places it, i. e., a subsidiary company; (2) if effective to remove the company from its status as a subsidiary, the stay does not preserve the status quo because when the Commission acted, the company was a

subsidiary company under the act, and a stay could not change it; (3) no great or irreparable loss or injury will be suffered by the company, if the stay is vacated, but if not, the national public interest and the interests of investors and consumers may be adversely affected; and (4) this court was without jurisdiction to stay the Commission's order because the jurisdiction to stay is for the purpose of preserving the statu quo, but here, statu quo, i. e., as a subsidiary company, is preserved without the stay.

Upon the hearing of respondent's motion the cause was set for hearing on the merits, and the motion taken under advisement. In view of our decision on the merits, the motion has become moot.

The Commission held that the trial examiner had reached his recommendation because he had misconstrued the statute. The Commission construed § 2(a)(8) of the act as meaning (1) that the applicant had the burden of proving that its management and policies are not subject to the controlling influence of North American; and (2) that "controlling influence" meant something less in the form of influence on the management or policies of a company than "control" of such company, that "control" includes the power to control, and "subject to a controlling influence" includes susceptibility to domination. It found that petitioner "has not demonstrated that its management and policies are not subject to the controlling influence of North American. . . ." The two rules of law mentioned above and the finding are challenged here.

As to the finding, petitioner contends, as the Board found "that the record does not reveal any past attempts by North American to interfere affirmatively with the management or policies of P. G. & E." If petitioner's contention regarding the second rule of law above mentioned is correct, then reversal follows. However, if the Commission's view on the second rule of law is correct, then the question arises as to whether there is any substantial evidence to support the finding.

[1, 2] Section 2(a)(8) of the act provides that the Commission shall declare that an applicant is not a subsidiary company, if it finds three facts: (1) that the applicant is not controlled directly or indirectly by a holding company; (2) that the applicant is not the medium of control of another company by a holding company; and (3) that "the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company . . . so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this chapter upon subsidiary companies of holding companies." Since the statute requires findings of all three facts, in order to exempt a subsidiary as such, and since the third fact was not found by the Commission, the company is not entitled to exemption if the Commission's action regarding the third fact is sustained here.

The company contends that the language of the statute describing the third fact means "actual and existing control," rather than "susceptibility to control" as the Commission held, and since the Commission found that the

evidence affirmatively showed a lack of actual and existing control, an exemption order should have been granted. The company quotes a portion of a committee report, and a part of Senator Wheeler's argument in the debates on the act. While the report sheds no light on the present question, the portion of the argument mentioned definitely supports the company's view. We think such argument must be disregarded because contrary to the plain meaning of the act. Pennsylvania R. Co. v. International Coal Mining Co. (1913) 230 US 184, 198, 199, 57 L ed 1446, 33 S Ct 893, Ann Cas 1915A 315. If the company's argument were adopted, then the first and third facts enumerated in the statute would be identical, and the third would therefore be surplusage. In view of the rule, that a legislative body is presumed to have used no superfluous words in a statute (Platt v. Union P. R. Co. (1879) 99 US 48, 58, 25 L ed 424), and the rule that "effect shall be given to every clause and part of a statute" (Ginsberg & Sons v. Popkin (1932) 285 US 204, 208, 76 L ed 704, 52 S Ct 322), we think the construction of the statute by the Commission which gives effect to the entire statute is correct and must be sustained.

[3] We are thus brought to the questions regarding the findings and the evidence. The Commission found that the company had not "demonstrated" a lack of susceptibility to control by North American. The company argues that the Commission thus saddled it with a burden of proof to a clear and convincing degree. The Commission argues that the company has the burden of proving the lack of susceptibility to control. Dispute between the parties exists with respect to the question as to whether the statute creates a rebuttable presumption that the company is a "subsidiary company" or whether the company is "prima facie" such a subsidiary.

The words "burden of proof" are used in two senses: (1) the duty to prove a charge by a degree of proof such as a preponderance of the evidence; and (2) the duty to go forward with the evidence. Department of Water and Power v. Anderson (1938) 95 F(2d) 577, 582, 583. In the first sense, "burden of proof" has no application to an administrative proceeding such as this. The statute does not specify any degree of proof required for any particular finding. The statute in question permits an application to be *granted* without hearing, but requires "notice and opportunity for hearing" if the application is *denied* or *otherwise disposed of*.

The statute does not even specify the party who shall have the duty of opening and closing the hearing. If such a hearing is held it is only common sense which requires the company to present its evidence, since it seeks a particular declaration. When the evidence is all in, the Commission considers the whole body of evidence both pro and con, and finds what the ultimate facts are, unrestrained by any rule regarding burden of proof, as used in the first sense. The sole restraining rule is that the fact found must be supported by substantial evidence, as is provided in § 24(a) of the act, and if such fact is so supported, it is conclusive, whether it is supported by what someone other than the Commission thinks is a *preponderance* of the evidence or not.

Since the company is, by the terms of the act, a "subsidiary" company and can be relieved of that status only by an order of the Commission, and since such an order may be made only when the Commission finds three facts, in a broad sense, it is natural to say that the company has the "burden of proof." However, when those words are used, neither of the technical senses, mentioned above, is intended. What is meant is that the company must present substantial evidence which convinces the Commission as to the three facts mentioned. We do not understand that anything different was meant in Securities and Exchange Commission v. Sunbeam Gold Mines Co. (1938) 95 F(2d) 699, 702 and Detroit Edison Co. v. Securities and Exchange Commission (1941) 119 F (2d) 730, 739, 39 PUR(NS) 193.

The company contends that the finding of the Commission that the company "has not demonstrated that its managment and policies are not subject to the controlling influence of North American" is not sustained by substantial evidence. The Commission relied on facts and made inferences to support its finding, as follows:

(a) North American owns 17.71 per cent of the voting stock in petitioner. The second largest stockholder holds 1.72 per cent of the voting stock. The rest of the stock is owned by corporations and individuals, scattered widely. Of the total voting stock 47.9 per cent is held by nonresidents. The Commission said:

". . . It is apparent that if a vital and substantial conflict arose between applicant and North American and matters came to the point of a proxy fight, the holdings of North American represent a tremendous advantage in any such fight. Counsel have argued as to the possible outcome of such a proxy fight. We need not speculate here as to whether North American's 17.71 per cent of voting power, plus the votes it could attract would be offset by the voting power which the local management could attract. It cannot be denied that, in any event, North American's holdings would make it a formidable opponent. And the mere fact that there is a strong possibility that North American could prevail would, in itself, be a potent tool in influencing the management to give heed to North American's wishes."

(b) North American's holdings have represented from 25 per cent to 30 per cent of the total votes cast at stockholders' meetings from 1931–1940. The Board said:

". . . First, so long as North American is satisfied with the present management, North American's voting power and the proxy machinery in the hands of the management make it virtually impossible for any other interest or group of interests to elect a majority of the directors. Second, North American's votes have represented 24 to 30 per cent of the votes cast at stockholders' meetings, and by virtue of its stockholdings, North American had the power to break a quorum at all but two stockholders' meetings since it became applicant's largest stockholder; if it had chosen to do so, no business could have been transacted at such meetings. Third, the ownership of virtually ⅓ of applicant's common stock gives North American an effective veto power over any corporate action requiring the con-

sent of ⅔ of each class of stock— e. g., mergers and consolidations."

(c) Petitioner was organized in 1905 and now represents the consolidation of over 400 separate companies. It formerly purchased power from Great Western Power Company, which was organized in 1906. During most of the latter's existence, 90 per cent of its revenues came from territory in competition with petitioner. Several unsuccessful attempts were made by petitioner to acquire the properties of Great Western between 1911 and 1925. Petitioner's present president is one Black, formerly an employee of Great Western. North American acquired control of Great Western in 1925, and in 1927, Black went to New York as vice president of North American—his principal duties at that time being to keep in touch with and assist Great Western and its subsidiaries.

In 1930, following negotiations begun in the previous year between Black and petitioner's then president, resulted in the acquisition by petitioner of the securities held by North American in Great Western and its subsidiaries. It was orally agreed that North American would not interfere with petitioner's management, that North American would be entitled to three members on petitioner's board of directors and one member on its executive committee. Black became a member of petitioner's board of directors as North American's representative.

Regarding these facts, the Commission said:

"It is wholly untrue to characterize North American's relationship to P. G. & E. as merely that of a stockholder holding an investment interest. I now has two of its representatives o P. G. & E.'s board of directors, and b cumulating its votes it could elect a least three directors. Moreover, un der the agreement made at the time o the Western Power Deal, it could a any time have a representative electe to applicant's executive committee Against the background of the othe facts we have discussed, the fact tha North American has been given th 'right' to such representation on appli cant's board of directors and executiv committee is, we think, of materia significance. We find some signifi cance, too, in the frequent and detaile reports of every phase of applicant' operations sent by applicant to Nort American; no such reports are sent t any other stockholder."

(d) Regarding the facts mentione under (c), the Commission said:

"Nor can we disregard the fact tha applicant's most important executiv officer, Black, its president, was, fo eight years just prior to his appoint ment, a senior executive of Nort American. From February, 1927, t June, 1930, Black's primary duty a vice president of North American wa to exercise holding company supervi sion over the activities of the subsidi aries of Western Power Corporation He conducted the negotiations fo North American in which Weste Power was transferred to P. G. & E and as a result of which North Ameri can acquired its interest in P. G. & E For five years, from 1930 to 1935 Black was the individual in the Nort American organization who, mor than any other one person, kept ad vised as to applicant's business and fol lowed applicant's affairs in the light o

North American's interest. It is also significant that since Black became president of P. G. & E., no effort has been made by North American to have representation in the executive committee, and no one in North American's management has followed applicant's affairs as closely as he did. It is wholly unreal to suppose that Black would be uninfluenced by these circumstances and, in his dealings with North American, would treat it as merely a large stockholder of P. G. & E."

[4] The facts, as thus stated, are not disputed. It is contended that the inferences drawn are contrary to the evidence. Such evidence was, of necessity, opinion evidence, because the facts inferred by the Commission were events which *might* happen, not what actually happened. In other words, the evidence relied on consisted of predictions that specified events *would not* occur, and did not consist of facts that such events *could not* happen. Manifestly, the Commission was not bound to accept the predictions as facts. As said in National Labor Relations Board v. Link-Belt Co. (1941) 311 US 584, 597, 85 L ed 368, 61 S Ct 358, 365: "Congress entrusted the Board, not the courts, with the power to draw inferences from the facts. . . . The Board, like other expert agencies dealing with specialized fields . . . has the function of appraising conflicting and circumstantial evidence, and the weight and credibility of testimony." The rules quoted are applicable here.

Regarding the inferences made, the only question which we may consider is one of law, that is, were the inferences made reasonable? We think a reasonable man could reach the conclusion the Commission reached, and therefore the finding must be sustained.

[5] The company also contends that the Commission did not consider other evidence which tended to show that North American had not attempted to dominate the company in the past. However, as quoted above, the Commission found specifically in accordance with such evidence. In view of what we regard as the proper construction of the words in the statute, "subject to a controlling influence," a finding for the company is not compelled by the fact that North American had not dominated the company in the past. Congress may prevent an evil from occurring, and need not wait till the damage is done before acting. Compare: Consolidated Edison Co. of New York v. National Labor Relations Board (1938) 305 US 197, 222, 83 L ed 126, 26 PUR(NS) 161, 59 S Ct 206. We think the construction of the statute approved here, carries out what we think Congress regarded as a preventive measure.

After finding that petitioner had failed to sustain its burden of showing that it was not subject to the controlling influence of North American, the Commission held that it was necessary or appropriate in the public interest or for the protection of investors or consumers, for petitioner to be subject to the act. It stated in this connection that petitioner "is a company with stated assets of almost $800,000,000 serving in excess of 1,500,000 customers; its securities are listed and traded on national securities exchanges and are owned by investors throughout the country." This finding arises

by reason of § 2 (a) (8) of the act quoted above.

[6 7] It is obvious that what is "necessary or appropriate in the public interest" is a question for the Commission to decide. Section 1(b) of the act, 15 USCA § 79a (b) enumerates a number of evils existing between holding companies and their subsidiaries. Section 1(c) provides in part: ". . . it is hereby declared to be the policy of this title [chapter], in accordance with which policy all the provisions of this title [chapter] shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section. . . ."

The company contends that this quoted provision is the standard by which the Commission is to be guided in determining what is "necessary or appropriate in the public interest" and that there is no showing of the existence of present evils, or of "such a controlling influence as would enable the holding company to bring about the evils enumerated in the act."

We think it is unnecessary to decide this question, because of the construction of § 2(a)(8). The words "so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title [chapter] upon subsidiary companies of holding companies," which we will refer to as the necessity clause, are such that the meaning of the entire sentence is not clear. We think there are three possible constructions of the entire sentence.

The narrowest construction of the sentence arises when the necessity clause is construed as modifying all three of the conditions mentioned in (i), (ii), and (iii), that is, e.g., that the control mentioned in (i) must be of a kind which makes it necessary or appropriate for the applicant to be held to be subject to the act. The Commission in Re Wisconsin Valley Improv. Co. (1940) 8 SEC 134, 36 PUR(NS) 305, 310, found that the applicant was subject to the controlling influence of holding companies, but that because of "the character of applicant's business and the nature and extent of statutory and state Commission regulation" it was not necessary or appropriate to make the act applicable to the applicant. That decision cannot be said to be unreasonable. It seems as reasonable to say that there might be actual control under (i) and yet the same factors would prevent the control from being exercised.

A second, and more liberal construction, in so far as it gives the Commission broader powers, arises when the necessity clause is considered as modifying only the condition mentioned in (iii). In other words, if there is control, specified in (i) or applicant is the intermediary through which such control is exercised, then the application should be denied, regardless of whether such control makes it necessary or appropriate that the applicant be held to be subject to the act, and that it is only when the applicant is subject to a controlling influence, that there must be necessity or appropriateness in the public interest for applicant to be subject to the act. Considered superficially from the standpoint of sentence structure the second construction seems to be correct. However, even though there is no control under (i) it may be that such control cannot be

exercised, or the control may be regarding a thing which could not possibly harm anyone. In either event, it seems illogical to say that the necessity clause modifies the controlling influence under (iii) but not the control under (i).

A third construction, and the one which gives to the Commission the broadest powers, arises when the necessity clause is not considered as a modifying clause at all, but as a fourth condition. As thus construed, before the application could be granted it would be necessary for the Commission to find that there was no control under (i), that applicant was not an intermediary through which such control might be exercised under (ii), that applicant was not subject to a controlling influence under (iii), and that it was not necessary or appropriate in the public interest to make the act applicable to applicant. If the contrary of any of the four conditions thus enumerated were found by the Commission, then the application would have to be denied. In other words, if the Commission found control under (i), or that applicant was the medium of control under (ii), or that applicant was subject to a controlling influence under (iii), the application would have to be denied regardless of whether there was necessity or appropriateness under the necessity clause; on the other hand, if the Commission found that none of those three conditions were present, it could still deny the application on the ground that there was a necessity or appropriateness that the act be held to be applicable to the applicant under the necessity clause.

We believe the latter construction is correct. Congress thought that the ownership by one corporation of 10 per cent or more of the voting securities of another sufficient to declare the latter corporation to be a subsidiary, regardless of any other factor. It became a subsidiary not because of "control," or because it was the medium of control, or because it was subject to a "controlling influence," but because of the ownership of at least 10 per cent of its stock. Congress recognized that harm might result to the public when there was such ownership, regardless of whether any of the three factors were present. It did not make as a condition to regulation any of these three factors. It is unreasonable to say that Congress intended to exempt from regulation when those three conditions only were not present. It seems apparent that harm might result to the public when none of such factors was present—that is the harm might spring from other factors. Such factors would be covered by the fourth condition, because of its generality.

This view is not contrary to the result of the Commission's holding above mentioned. It is inconsistent to say that A is subject to the controlling influence of B, when B is prevented from exercising it. In such event, A is not subject to a controlling influence because B cannot in fact exercise it.

The remaining portion of § 2(a)(8) of the act speaks of the "conditions specified in clauses (i), (ii), and (iii)." It does not say that there are only three conditions, but makes it clear that the conditions referred to are those "regarding the affiliations or intercorporate relationships." The fourth condition relates to the conditions between the subsidiary and the public.

As thus construed, the application was properly denied regardless of whether the finding under the necessity clause was sustained by substantial evidence or not.

[8] The company suggests that some constitutional questions are involved, but it does not appear that such questions were presented to the Commission, and therefore we cannot consider them. See § 24(a).

The petition to review is denied.

GARRECHT, C. J., dissenting: It appears that North American Company (hereinafter called "North American") owns, controls, and holds with power to vote 17.71 per cent of petitioner's outstanding voting securities. Therefore, by statutory definition petitioner is a subsidiary of North American. Following the provisions set forth in the act, Pacific Gas and Electric Company sought by appropriate petition to bring itself within the exemption provided in the act by alleging and offering to establish that (1) it is not controlled, directly or indirectly, by North American; (2) it is not an intermediary company through which control of another company is exercised; and (3) its management or policies are not subject to such a controlling influence, directly or indirectly, by North American, so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers, that it be subject to obligations, duties, and liabilities imposed in the act upon subsidiary companies.

The Commission issued notice of, and ordered, a hearing on petitioner's application. The hearing was had before a trial examiner. Although there was no real dispute as to the facts as set forth in the trial examiner's report, both counsel for petitioner and counsel for the Commission filed with the trial examiner separate requests for specific findings.

The report and findings of fact made by the trial examiner found and concluded that petitioner was entitled to the order which it sought. Thereupon counsel for the Commission filed exceptions to the report, and the matter was presented to the Commission upon brief and oral argument, and thereafter the Commission made findings, rendered an opinion, and entered its order denying petitioner's application.

Although by the terms of the statute Pacific Gas and Electric Company is an affiliate of North American, because it does hold more than 10 per cent of petitioner's stock, nevertheless if the evidence shows that it is not controlled and that its management and policies are not subject to a controlling influence, directly or indirectly, by such holding company, it is entitled to an order of the Commission declaring the company not to be a subsidiary.

While the Commission concedes that the evidence shows that there is no control of petitioner by North American, the Commission maintains that it may still deny petitioner's application upon the assumption or supposition that merely ownership of 17.71 per cent of the stock of petitioner by North American renders it subject to the controlling influence of such holding company despite the facts that there never has been any exercise of control or any effort in that direction and in the face of the

evidence of the officers of North American that it holds the stock as an investment only and that there is no intention to exercise any control over petitioner and the further evidence of the officers and management of petitioner that they would not permit such control. It is also an admitted fact that petitioner's utility properties are all located, and its business is conducted, in the state of California. In this regard the Commission said: "On the basis of the record before us, we find that applicant and all of its subsidiary companies are predominantly intrastate in character and carry on their business in California, the state in which each of them is organized, and that applicant is predominantly a public utility company whose operations as such do not extend beyond the state of California. . . ."

Petitioner is subject to the Public Utilities Act of said state and can issue securities only with the approval of the California Railroad Commission. This state Commission by its representatives appeared at the hearing and presented a statement, which was received by the Commission, showing the manner and extent of its regulation of appellant, and in this document the California Railroad Commission stated that it was "aware of no instance during the course of this Commission's regulation of Pacific Gas and Electric Company when its management or policies appear to have been either controlled or influenced by North American Company."

The Question of Control

Referring to the question of control as indicated by stock ownership, the court in Electric Bond & Share Co. v. Securities and Exchange Commission (1937) 92 F(2d) 580, 592, 21 PUR(NS) 299, 316, said:

". . . Congress elected the element of stock ownership, a factor most usually indicative of control, as prima facie evidence of control. The burden of proof, which is cast upon the utility company to prove otherwise, is not onerous. Judicial review is provided to guard against any arbitrary action on the part of the Commission and to afford a remedy should the Commission's finding be not supported by substantial evidence. . . ."

That case was subsequently appealed to the Supreme Court of the United States under the same title (1938) 303 US 419, 82 L ed 936, 22 PUR(NS) 465, 58 S Ct 678, 115 ALR 105. In the latter case the Department of Justice, for the Securities and Exchange Commission, filed an able and carefully prepared brief, discussing various sections of the act. Upon the subject of stock control, because of the clearness of the reasoning and aptness of application to the present discussion we quote from that brief the following:

"A holding company, by express definition . . . is a company which *actually controls* operating companies, and not a company which merely has an investment in operating companies. Conversely, a subsidiary company, by express definition . . . is a company *actually controlled* by the holding company, and not simply a company in which the holding company has a substantial interest. Ten per cent voting stock ownership creates a presumption of control in order to facilitate administration of the act and to

prevent ready evasion. That presumption, however, can readily be rebutted by either the putative holding company or the putative subsidiary company (§ 2(a) (7) and (8)) upon a showing that the company does not in fact exercise control. . . . No true investment company—i.e., a company which does not control the operating companies in which it invests —is in any manner affected by the act."

The following quotation is also from that brief: ". . . a company may readily prove if such be the fact that it does not possess control. Such burden of proof is not onerous because every company has completely within its own organization full knowledge and control of all the facts and evidence. . . . Judicial review is provided to guard against any arbitrary action on the part of the Commission, and to afford a remedy should the Commission's findings of fact be not supported by substantial evidence (§ 24(a)). . . ."

With these declarations of the court and from the Commission in mind let us have a look at the testimony as found in the record and which was not contradicted.

The present board of directors consists of five directors who are officers and full-time employees of petitioner, eight directors who are prominent San Francisco business men, and two directors, Fogarty and Freeman, who are admittedly representatives of North American. Neither of these two North American representatives is a member of the executive committee.

All directors and principal officers, with the exception of the two directors who are officers of North American, are residents of San Francisco and vicinity; were either born in California or came to California early in life and have resided in California since that time; are prominently identified with California enterprises, and have no substantial interest in any eastern business or any corporation whose business is not principally conducted in California. During the entire period of petitioner's existence the members of the board of directors, with few exceptions, have been residents of San Francisco and vicinity, and have and do own and represent substantial stock interests in petitioner, and the fathers of four directors (directors C. O. G. Miller, Norman B. Livermore, A. E. Wishon, and W. W. Crocker) were active in the affairs of predecessor companies. All of the directors, with the exception of directors Fogarty and Freeman, know each other well, some are associated together in other enterprises, and several have known each other from boyhood.

The directors, other than those who are active executives of the company, and excepting directors Fogarty and Freeman, are prominent in other business affairs in San Francisco and vicinity; two are chairmen of the boards of local banks, one is president of a third bank; all are directors of numerous corporations, including other utilities and several are officers or trustees of educational or charitable institutions.

Each of petitioner's local directors to whom the question was propounded, namely, Messrs. Miller, McKee, Crocker, Chickering, Livermore, Coghlan, Palmer, Nichols, McIntosh,

Wishon, and Black, testified that it was his opinion that North American could not, if it attempted to do so and its attempts were resisted by the local directors, secure sufficient proxies to obtain a majority of the stock represented at a stockholders' meeting.

Mr. Black testified that he would oppose any attempts by North American to control or influence the management or policies of the petitioner with "every resource at my command" and that he was sure they would not be successful in a proxy fight because —

"This company has a rather unique position in San Francisco and in California. It has been known for many years as a California company. The fact that the Great Western Power Company was controlled by an eastern company, the Western Power Corporation, was a great handicap to the Great Western Power Company in doing business here and particularly in competition with the Pacific Gas and Electric Company. I know something of that feeling. I think 48 per cent of our stock is held here in California and I think without question that stock would be almost unanimously opposed against any attempt by any eastern interest, particularly any New York holding company, to get control of the company.

"Our directors are men not only who are men who own, or are able to influence very large blocks of stock directly, but they have a standing in the community and in the business world which I think would be very decisive in getting large amounts of stock proxies from holders outside of the state. I am sure that the community as a whole would be entirely on the side of the company in any such fight."

Director Fogarty, the representative of North American on the board, testified that the management or policies of petitioner were neither directly nor indirectly subject to a controlling influence by North American. Nor had that company ever attempted to influence or control the management. He also said that as a practical matter it would not be possible. Mr Freeman, the other representative, corroborated this view. Mr. Fogarty never attended a directors' meeting. This is also true of Mr. Freeman, who has never been in California.

The testimony of all of these witnesses is not contradicted.

It is probably worth remarking in this connection that North American has never solicited proxies; in fact, its officers or representatives have never voted its own stock, its proxies having been sent to other stockholders. If there existed any apprehension that North American might seek proxy control, the Commission has the power to prevent North American from soliciting any proxy.

To reach the conclusion arrived at by the Commission every circumstance is viewed with a hostile eye and every instance tortured into some semblance of sinister purpose. Thus, the selection of James B. Black as president of appellant upon the unexpected death of Mr. Hockenbeamer, who had been president for many years, is pointed to as unmistakable proof of the evil influence exerted by North American, because at the time of Black's appointment he was the vice president of North American.

It must be admitted that Black prob-

ably was as well qualified for the position as anyone anywhere; his career is altogether a notable one. His personal, professional, and administrative achievements are detailed at some length in the record, from which we summarize briefly: He came with his parents to California at the age of twelve and has lived in San Francisco and vicinity ever since, with the exception of the short period when he resided in New York and served as vice president of North American. He was educated in the schools of Oakland and San Francisco and at the University of California, from which he graduated in 1912 in engineering. After graduation he was employed as a service inspector by City Electric Company, then a subsidiary of Great Western operating in San Francisco. About 1915, the properties of City Electric Company were taken over by Great Western, and Mr. Black successively engaged in sales, sales engineering, and administrative work in its San Francisco division. Later he became division manager, assistant general agent and general sales manager, and acting general manager, and in 1922 was made vice president, general manager and a director of that company. After North American acquired control of Western Power Corporation, Mr. Black retained these positions until February, 1927, when he went to New York at the invitation of North American as one of its vice presidents.

His selection as president of Pacific Gas and Electric Company was entirely the result of the action of the California directors of that company, many of whom were acquainted with Black's capabilities. The fact that he was a Californian, that he was familiar with some of the properties of the company, and had wide experience were deemed qualifications, and his selection met with the unanimous approval of the board of directors. No suggestion of Mr. Black's election was made by anyone in North American; his selection was not anticipated by the officers of that company, to whom it was a surprise. There is no evidence in the record indicating that North American played any part in the choice of Black as president of petitioner, other than to consent when the California directors asked permission to offer the position to him. When Black accepted the position he assured the California directors that he would sever all connections with North American. He has never sought or received the advice, approval, or recommendations of North American or its officers on any dividend rate, salary, refinancing, or any other pending matter. There is no difference between the information received by North American nor in the other relations with petitioner since Black became president then existing before that time.

Not only did the Commission disregard the uncontradicted evidence substantiating that there was no "control" or "controlling influence," it also disregarded a specific and important instance revealed by the evidence which very persuasively negatived such control. At one of the meetings of the board of directors of Pacific Gas and Electric, at which the question of declaring a dividend was up for consideration, it was voted that the dividend for that year be declared at the rate of 6 per cent instead of

the usual 8 per cent. The representatives of North American requested the board to reconsider this action, but it did not accede to the request.

Notwithstanding the uncontroverted evidence to the contrary, the Commission went off into the realm of speculation as to what might happen if North American should undertake to engage in a proxy fight with appellant's existing management for control, and it determined that the mere fact that there might be a strong possibility (based likewise on conjecture) that North American could prevail was itself proof of "susceptibility" to a controlling influence.

This opinion is much too long but we must at least mention that there are other instances where the Commission very frankly has interpreted the testimony of the witnesses contrary to their evidence. These interpretations, which are exaggerated into some semblance of an argument, are then designated as inferences of the Commission as to "events which might happen" but "not what actually happened." The majority opinion in approving these methods of the Commission quotes an excerpt from National Labor Relations Board v. Link-Belt Co. (1941) 311 US 584, 597, 85 L ed 368, 61 S Ct 358, 365, as follows: "Congress entrusted the Board, not the courts, with the power to draw inferences from the facts. . . . The Board, like other expert agencies dealing with specialized fields . . . has the function of appraising conflicting and circumstantial evidence, and the weight and credibility of testimony." But here there is no conflicting evidence to appraise, and as to weight and credibility of testimony it must be noted that the witnesses who testified contrary to the findings were outstanding men of affairs in California, and they were not contradicted or impeached, and no reason appears in the record why they should be discredited.

According to the Commission petitioner was required to "demonstrate" noncontrol or influence by North American. The act does not require any such mathematical extreme which excludes possibility of error. 23 CJ 9. It is sufficient if such showing is supported by substantial competent evidence which is not contradicted. Due process requires that the competent evidence adduced be fairly considered by the Commission on its merits. As was said by Justice Brandeis in speaking for the court in the Chicago Junction Case (1924) 264 US 258, 265, 68 L ed 667, 44 S Ct 317, 319: "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced or to make an essential finding without supporting evidence is arbitrary action." In Morgan v. United States (1936) 298 US 468, 480, 80 L ed 1288, 56 S Ct 906, 911, Chief Justice Hughes said: ". . . The requirement of a 'full hearing' has obvious reference to the tradition of judicial proceedings in which evidence is received and weighed by the trier of the facts. The 'hearing' is designed to afford the safeguard that the one who decides shall be bound in good conscience to consider the evidence, to be guided by that alone, and to reach his conclusion uninfluenced by extraneous considerations which in other fields might have

play in determining purely executive action. . . ."

Moreover, this court is not called upon to determine the credibility of witnesses or to reach a conclusion upon substantially conflicting facts. Indeed, no such question is presented here, since the Commission has said in its opinion that—

"There is almost no dispute as to the facts in this case as they are set forth in the trial examiner's report and in the briefs of both counsel. The point of issue with respect to the application under § 2(a) (8) is rather one of statutory interpretation and in this respect we cannot agree with the conclusions reached by the trial examiner," who found that Pacific Gas is not in fact controlled by, or subject to the controlling influence of, North American.

The Commission principally relies upon the case of Detroit Edison Co. v. Securities and Exchange Commission (1941) 119 F(2d) 730, 39 PUR (NS) 193. It is submitted that the facts in that case are so different from the one before us that it cannot be considered an authority to support the action of the Commission here. In the Detroit Edison Case, by agreement with two existing companies, a syndicate organized by North American acquired their stock and organized the Detroit Edison Company. Its officers and directors were all designated by North American. On behalf of its syndicate North American then offered all of the stock of the corporation and agreed to finance and furnish other assistance to the new company on certain terms. By the deal the syndicate acquired three million dollars of Edison's first mortgage bonds and fifty thousand shares of its stock. The Edison then began operations. Thereupon the syndicate was dissolved, and North American retained more than 10 per cent of petitioner's outstanding voting securities. The record shows that North American dominated the board of directors through the years, and at the time of the hearing a majority of the directors still had affiliations with North American. There were other intercompany relationships too extended to detail here, but which are referred to in the opinion and which had been discontinued not long before the hearing. From these facts it was concluded that in the light of Edison's origin and the unbroken continuity of North American's officers, directors, and designees on its board, and its absolute domination for many years by the parent company, it was not entitled to an order granting exemption from the statute. In summing up the situation the court said:

"The fact that the North American Company had abandoned some of the characteristics of 'controlling influence' over the petitioner at the time of the hearing, did not require the Commission to disregard prior interrelated activities. There is no showing that its latent power to resume such control has been extinguished. The relationship is such that they may enter into similar activities in the immediate future. . . .

"Giving due weight to the past transactions of petitioner with the North American and the continuing opportunity for the resumption of such activities and the extent of the petitioner's business and the widely scattered ownership of its stock, the Commission committed no error in

denying petitioner exemption from the present act." 119 F(2d) at pp. 739, 740, 39 PUR(NS) at pp. 206, 207.

All the evidence in the case before us shows a complete absence of such relationships and of any control throughout the period since North American became an owner of certain stock of Pacific Gas and Electric Company because of the transfer to it of certain utility properties that it had theretofore owned.

The Commission admits that the record does not reveal any past attempt by North American to interfere with its management or policies. It is likewise conceded that there is no evidence of actual control, nor, as has been shown, is there any substantial evidence from which any legally sound inference can be drawn that there ever was any effort whatsoever by North American to subject appellant to any controlling influence. Nor is there any testimony in the record from which any fair inference can be drawn that petitioner was subject to the controlling influence of North American.

From the discussion in Congress at the time the act was under consideration and as well from the fair and ordinary meaning of the language, the phrase "subject to a controlling influence" does not mean, as the Commission found and the majority opinion determined, that appellant was required to "demonstrate" that its management and policies were not "susceptible to control" by North American. "Subject to a controlling influence" is not the equivalent of *"susceptible* to a controlling influence." "Susceptible" and "subject" are not interchangeable or synonymous terms. The word "susceptible" connotes an especial liability to mental or emotional impressions. Advisedly that expression was not used in the statute. But the word "subject" is used, and here it occurs in relation with "control," and in that sense it can be correctly defined as meaning "under rule, authority, or domination." Thus, "subject to a controlling influence," as stated in the statute, is not the same thing as "susceptibility" to a controlling influence as expressed by the Commission. One phrase refers to an actually existing state; the other might be applied to express some future condition which uncertain events might possibly bring about. In considering this aspect of the matter it is important to keep in mind that under the statute the Commission is in a position to act at once if ever the susceptibility should become an actuality, even if the Commission had theretofore granted petitioner an exemption at a time when the facts showed a lack of any actual and existing control or controlling influence.

It is also clear that the vague, artificial tests here employed are not sanctioned by the act. Nor was it expected that inferences based upon inferences, or suppositions, or even possibilities, would be substituted for substantial evidence.

The facts presented to the Commission and all reasonable inferences, deductions, and conclusions to be drawn therefrom, considered in their entirety and in relation to one another, negative the findings of the Commission. The inferences which are suggested as supporting the order of the Commission are based on mere suspicion.

In National Labor Relations Board v. Columbian Enameling & Stamping Co. (1939) 306 US 292, 299, 300, 83 L ed 660, 59 S Ct 501, 505, Mr. Justice Stone said:

". . . But as has often been pointed out, this, as in the case of other findings by administrative bodies, means evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred. . . . Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established. 'It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,' . . ."

In vesting the Commission with the duty of ascertaining "control" or "subject to a controlling influence" of one company by another Congress did not imply that a potential facility to exercise control was sufficient to establish such controlling influence. If this alone were sufficient the Congress would not have made provision for the exemption.

The legislative history of the act corroborates this view. In the course of the debate on the bill, Senator Wheeler, chairman of the committee in charge, said, with reference to the 10 per cent clause (79 Cong. Rec., p. 8397): "That is only prima facie evidence; but even if they hold 40 per cent of the stock of a company they may come before the Commission and produce evidence that they are not actually in control of the company, and the Commission is directed to make a finding and to exempt them if they are not actually controlling the company as the word 'control' is defined in the bill."

Again, Senator Wheeler said (79 Cong. Rec., p. 8439): "No, Mr. President. Let me make a distinction. The Senator from Delaware said: 'Suppose I own 10 per cent of the stock of some company.' Unless I control that company I am not a holding company under the terms of this bill. The mere ownership of the 10 per cent of the stock does not of itself make him a holding company, because unless he actually controls the company he is not a holding company. The Senator may overlook the factor of control. He may show that he actually does not control the company in which he owns 10 per cent of stock, and if he does not have control he is not a holding company."

While the majority opinion concedes that this discussion in Congress definitely supports the position of appellant, that view is discarded because it is said that if followed, some language of the act would appear to be surplusage. Neither the Commission nor the court is warranted in departing from the purposes expressed because of any doubts that may exist as to the wisdom of following the course which Congress has marked out.

The evidence in the record so clearly sustains the position of petitioner that the majority opinion, in its final analysis, appears to have deemed it necessary to expand the statute beyond its terms. As if to relieve itself from some haunting conviction that the findings have no basis in substantial evidence, the court proceeds to elaborate a new pronouncement, whereby the Commission can be sustained even admitting that there is no

substantial evidence or not any evidence at all.

According to the contention of all the parties, but three conditions must be met to entitle a petitioner to an order of exemption, to wit: (1) that the applicant is not controlled directly or indirectly by a subsidiary company; (2) that the applicant is not the medium of control of another company by a holding company; and (3) that "the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company . . . so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this chapter upon subsidiary companies of holding companies."

The majority opinion, however, after having quoted the above language goes on to say that there is an additional construction, and "one which gives to the Commission the broadest powers," which "arises when the necessity clause is not considered as a modifying clause at all, but as a fourth condition. . . . If the Commission found that none of those three conditions were present, it could still deny the application on the ground that there was a necessity or appropriateness that the act be held to be applicable to the applicant under the necessity clause. We believe the latter construction is correct. . . ." And in conclusion the opinion recites:

". . . It is unreasonable to say that Congress intended to exempt from regulation when those three conditions only were not present. It seems apparent that harm might result to the public when none of such factors was present—that is the harm might spring from other factors. Such factors would be covered by the fourth condition, because of its generality.

. . . . . .

"As thus construed, the application was properly denied regardless of whether the finding under the necessity clause was sustained by substantial evidence or not."

It seems to me that the opinion of the court has added to the act by judicial construction conditions not imposed by Congress and by which the Commission has been relieved of the obligation which requires that the findings be sustained by substantial evidence.

The order of the Commission is arbitrary and capricious, and should be reversed.

SECURITIES AND EXCHANGE COMMISSION

Re The Middle West Corporation

[File No. 59-5, Release No. 3524.]

Procedure, § 2 — Powers of Commission — Waiver of time limit — Intervention.

1. The Securities and Exchange Commission has authority to waive a time limit for intervention set by a prior order, p. 119.

Intercorporate relations, § 19.11 — Intervention petition — Political subdivisions — Securities and Exchange Commission.

2. A political subdivision is not required by the Rules of Practice of the Securities and Exchange Commission to file an affidavit setting forth the interest to be represented by it upon a petition to intervene in proceedings before the Commission, p. 119.

Intercorporate relations, § 19.8 — Intervention by political subdivision — Integration of holding company system.

3. A state authority, created as a conservation and reclamation district concerned with electric power and related matters and authorized to operate in the same general territory as that within which a utility operates, is an "interested" political subdivision within the meaning of § 19, 15 USCA § 79s, and Rule XVII of the Rules of Practice of the Securities and Exchange Commission and may intervene in a § 11(b) (1), 15 USCA §79k (b) (1), proceeding concerning such utility company, p. 120.

Parties, § 18 — Intervention by political subdivision — Authorization.

4. The Securities and Exchange Commission, in determining whether a political subdivision should be permitted to intervene, need not look behind a petition appearing to be regular on its face and signed by the chairman and imprinted with the seal of the political subdivision to determine whether it has complied with its own state law or its internal procedure with respect to authorization by the governing board for such intervention, p. 120.

Procedure, § 13 — Matters considered — Motion to strike intervention petition.

5. The Commission will not, in passing on a motion to strike an intervention petition by a political subdivision, consider collateral issues raised in solving the good faith of the petitioner or its disabilities under state law, p. 120.

[May 11, 1942.]

MOTION *by registered holding company to strike intervention petition by a conservation and reclamation district; denied.*

APPEARANCES: Wilbur A. Osterling, for the Public Utilities Division of the Commission; Everett Looney, for the Central Power and Light Company; Alvin J. Wirtz, for the Guadalupe-Blanco River Authority.

By the COMMISSION: In the course of the proceeding under § 11(b) (1) of the Public Utility Holding Company Act of 1935, 15 USCA § 79k (b) (1), concerning The Middle West Corporation, a registered holding company, and its subsidiaries, the Guadalupe-Blanco River Authority sought to intervene in the case. By our order of December 11, 1941, permission to intervene was granted. The Central Power and Light Company, a subsidiary of Middle West and a party respondent in the proceeding, which is in the business of selling gas, water, ice, and electric services in southern Texas, moved to strike the petition, filed an answer to it and an application to take oral depositions and present evidence in support of the answer. After oral argument before us on April 15, 1942, the motion and application were denied. Our order

was entered immediately to enable the hearing to proceed in orderly fashion; the opinion stating the reasons for our denial is rendered herein.

The Guadalupe-Blanco River Authority is a conservation and reclamation district created by the state of Texas in 1935 and is authorized to operate in the same general area as that serviced by the Central Power and Light Company.[1] The statute creating the authority indicates that its purpose includes "the controlling, storing, preservation, and distributing of waters of the Guadalupe and Blanco rivers and their tributaries for irrigation, power, and other useful purposes. . . ."[2] Toward the accomplishment of these purposes, § 2(e) of the statute grants the authority the power "to acquire by purchase, lease, gift, or in any other manner (otherwise than by condemnation) and to maintain, use, and operate any and all property of any kind, real, personal or mixed, or any interest thereinfi within or without the boundaries of the district, necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred upon it by this act. . . ."

The intervention petition of the authority alleged that to carry out the public functions entrusted to it by the state of Texas, it desires to purchase some or all of the properties or the common stock of the respondent, Central Power and Light Company, but that the respondent has refused to make such sale to the authority and that continued control of such properties by the respondent violates § 11 of the Public Utility Holding Company Act and is inimical to the public interest. Pursuant to § 19 of the Holding Company Act, 15 USCA § 79s, where Congress made it mandatory upon us to permit the intervention of any "interested" state political subdivision in our proceedings (in accordance with such rules and regulations as we might prescribe), and Rule XVII of our Rules of Practice, we granted the petition for intervention.

[1] In opposing the intervention of the authority, Central Power and Light Company alleges, first, that the intervention petition was filed too late. On March 1, 1940, the Commission ordered that "any person proposing to intervene in these proceedings shall file with the secretary of the Commission on or before the 9th day of April, 1940, his request or application therefor. . . ." The intervention petition was filed subsequent to this date. Our order of December 11, 1941, however, permitting the authority to intervene was, in effect, a rescission or amendment of our prior order and a waiver of the time limit. Clearly, the Commission has the authority to waive a time limit imposed by itself.[3]

[2] It is further alleged that the intervention petition does not comply with Rule XVII of the Commission's Rules of Practice in that there was no accompanying affidavit filed setting forth the interest to be represented by the intervener in the proceeding. Rule XVII, however, does not require a political subdivision to file such affidavit; this requirement is applicable

[1] (1935) 21 Vernon's Tex. Civil Stats. 557, Title 128, Chap. 8.
[2] Ibid, § 1.
[3] See § 20 (a) of the Public Utility Holding Company Act of 1935, 15 USCA § 79t (a).

only to persons other than political units.[4]

[3] The respondent also alleges that the authority is not an "interested political subdivision of a state" within the meaning of § 19 and Rule XVII of the Rules of Practice, and that a political subdivision cannot intervene unless it shows that it is in danger of being directly aggrieved by a Commission order. In view of § 1 of the statute creating the authority which declares the intervener to be "a governmental agency and a body politic and corporate" of the state of Texas, it is clear that the authority is a "political subdivision" of the state. Respondent's allegations presumably go to its lack of interest in these proceedings. The authority, however, is empowered to operate in the same general district of Texas as that serviced by the respondent and has been entrusted with certain public functions relating to power in that area. We find that this is a sufficient "interest" within the meaning of § 19 and Rule XVII to permit intervention.

[4] The respondent further alleges that the authority has no power to intervene in these proceedings and that the governing board of the authority has not authorized its intervention. The petition of the authority to intervene appears to be regular on its face, signed by the chairman and imprinted with the seal of the authority. We see no reason to look behind this apparently regular action by a state agency to determine whether it has fully complied with its own state law or its internal procedure.

[5] The respondent raises the further objections that the authority has neither the power nor the financial ability to acquire the properties or common stock of the respondent, that the state board of water engineers and the state reclamation engineer have not approved the authority's plan to acquire the properties, as required by state law, and that the intervention is unlawful because it would result in a contract made penal under the act creating the authority. These objections raise many irrelevant issues which would lead us far afield from the main issues in the case. Likewise, the contention that the authority's intervention is not prosecuted in good faith, but represents a conspiracy on the part of certain individuals to obtain respondent's property, opens issues irrelevant in this case. We are not disposed to question the good faith of a state political unit seeking to intervene in our proceedings.

[4] Rule XVII provides, in part: "(a) Any interested representative, agency, authority, or instrumentality of the United States, and any interested state, state Commission, state securities commission, municipality, or other political subdivision of a state, shall be permitted to intervene in any proceeding upon written request. *Any other person may be permitted to intervene in any proceeding upon written application to the Commission* showing that he possesses or represents a legitimate interest which is or may be inadequately represented in such proceeding. . . .

"(b) *Any person filing an application* to intervene shall file therewith an affidavit setting forth in detail his interest or the interest to be represented by him in the proceedings, and stating whether the position which he may propose to take with respect to the pending matter is one already taken by any other party to the proceedings." (Italics supplied.)

Re Northern Cambria Water Company

[Securities Certificate No. 292.]

Security issues, § 49 — Prospective earnings as factor.

1. Securities should not be issued unless there are reasonable prospects that interest or dividends thereon can be paid over the life of the securities and adequate provision be made for the retirement of securities, p. 123.

Security issues, § 9 — Maturity date — Extension — Conditions — Financial and accounting reorganization.

2. Extension of the maturity date of bonds should be granted only for a limited period to give a corporation time to formulate a comprehensive plan of financial and accounting reorganization in accordance with suggestions of the Commission where earnings are inadequate to justify the present capitalization, p. 123.

[May 11, 1942.]

SECURITIES *certificate filed by water company with respect to extension of maturity date of bonds; extension granted for limited period pending new proposals.*

By the COMMISSION: Northern Cambria Water Company, hereinafter sometimes referred to as the company, was formed March 1, 1922, by merger of Northern Cambria Water Company, Spangler Water Company, and Barr Water Company. The merger was approved by the Commission at Application Docket No. 6574. The company serves water to the public in the borough of Spangler, Cambria county. It is controlled by Southeastern Gas and Water Company, a holding company.

In this securities certificate the company proposes the extension to August 1, 1951, of the maturity date of $89,000 principal amount of bonds which matured on August 1, 1941.

The securities certificate has been filed with us pursuant to § 601 of the Public Utility Law, which provides that ". . . every public utility, before it shall execute, cause to be authenticated, deliver, or make any *change or extension in any term, condition,* or date of . . . any bond, note, trust certificate, or other evidence of indebtedness of itself . . . shall have filed with the Commission, and shall have received from the Commission notice of registration of a document to be known as a securities certificate. . . ." (Italics supplied.)

We are required to register any such securities certificate if we should find, in the language of § 603 of said law, "that the issuance or assumption of securities in the amount, of the character, and for the purpose therein proposed, is necessary or proper for the present and probable future capi-

tal needs of the public utility filing such securities certificate"; otherwise we are required to reject the securities certificate. Such registration or rejection, § 603 also provides, "may be as to all or part of the securities to which such securities certificate pertains, and any registration may be made subject to such conditions as the Commission may deem reasonable in the premises." In determining whether a securities certificate should be registered or rejected, in whole or in part, we "may consider the relation which the amount of each class of securities issued by such public utility bears to the amount of other such classes, the nature of the business of such public utility, its credit and prospects, and other relevant matters." (Section 603.)

The securities certificate was filed on October 23, 1941, and on January 20, 1942, the company submitted an amendment to the certificate wherein it proposed (1) that the interest rate on the extended bonds would be reduced from 6 per cent to 5 per cent; (2) that the provision for a sinking fund of 1 per cent per annum which was originally eliminated from the extension agreement, would be reinstated; (3) that the First National Bank of Philadelphia would act as trustee under the indenture of Mortgage, replacing the Bellefonte Trust Company, which had resigned; and (4) that $15,106.37 of a total of $50,106.37 of notes and open account indebtedness due Southeastern Gas and Water Company would be forgiven by that company and that the balance of $35,000 would be converted into a 4 per cent noncumulative income note.

After giving effect to the proposed changes the company would have the following securities outstanding:

	Owned by Parent Company	Owned by Public	Total
First mortgage 5% bonds	$ 35,400	$53,600	$ 89,000
4% Income notes	35,000	.....	35,000
5% Preferred stock	16,100	.....	16,100
Common stock	40,000	.....	40,000
	$126,500	$53,600	$180,100

Interest has always been paid on the bonds, but since the organization of the company in 1922, dividends on both classes of stock have aggregated only $1,658.75.

As we have seen, the company would have $89,000 principal amount of bonds, $35,000 of 4 per cent income notes, $16,100 par value of preferred stock, and $40,000 par value of common stock outstanding, or a total of $180,100 of securities.

In comparison, the book value of the company's fixed capital as at July 31, 1941, was as follows, according to the company:

Fixed Capital		
Fixed capital per books	$258,575.69	
Less write-up due to appraisal 1929	17,579.66	$240,996.03
Less reserve for depreciation per books	$ 37,769.56	
Less adjustment due to appraisal 1929	3,009.40	34,760.16
Estimated original cost less reserve for depreciation at July 31, 1941		$206,235.87

[1] As a general thing, we favor original cost less a reasonably adequate deduction for accrued depreciation as a base for the issuance of securities. In no case, however, should securities be issued in an amount greater than the reasonably prospective earnings warrant; in other words, securities should not be issued unless there are reasonable prospects that interest or dividends thereon can be paid over the life of the securities, and adequate provision be made for the retirement of securities.

Since the estimated original cost of the company's property amounts to $206,235.87, and the total capitalization (bonds, notes, preferred stock, and common stock) amounts to $180,100, the company would be undercapitalized by $26,135.87, according to the company. But it is doubtful whether all the property included in the estimated original cost figure ($206,235.87) is really used and useful, and whether the adjusted accrued depreciation figure ($34,760.16) is adequate, when considered in connection with the undepreciated cost of the property it is intended to amortize.

We now come to the prospects of a sufficiency of earnings for (a) the payment of interest and sinking-fund charges on bonds, (b) interest on the 4 per cent income notes, and (c) dividends on preferred and common stock.

Interest at 5 per cent per annum on the $89,000 principal amount of bonds to be extended amounts to $4,450. The sinking-fund provision of 1 per cent amounts to $890. The earnings of the company available for the payment of $4,450 of bond interest and $890 for sinking-fund purposes, or an aggregate of $5,350, were as follows in several recent years:

Year	Earnings	Bond interest and sinking-fund requirement	Ratio of earnings to bond interest and sinking-fund requirement
1936	$6,980.04	$5,340	1.30
1937	7,598.29	5,340	1.42
1938	6,918.97	5,340	1.29
1939	6,578.73	5,340	1.23
1940	6,227.50	5,340	1.16
1941	7,229.35	5,340	1.35

These earnings-to-bond-interest-and-sinking-fund-requirement ratios obviously do not afford a sufficient margin of safety. It would appear that unless there is a decided improvement in earnings, without the necessity for any large expenditure for additions and betterments to plant, the company would not be in any better position to meet its obligation on the balance of bonds which would still be outstanding at the end of the 10-year extension period than it is now. It would also appear that only a relatively small proportion of the necessary funds would be available for (1) the payment in full of interest at 4 per cent ($1,400) on the $35,000 income note proposed to be issued, (2) the payment of the principal of the income note, and (3) the payment of a dividend at 5 per cent on the preferred stock.

[2] Clearly, the securities of the company carrying fixed interest and dividend rates should be scaled down,

and a real sinking fund should be provided, the sinking-fund provision in the indenture of mortgage being so worded, or having been so interpreted, as to enable the company to avoid making any payments into a sinking fund.

The company admits this, and has expressed its willingness to convert all its outstanding 5 per cent preferred stock into common stock and to provide a 1 per cent sinking fund into which payments would be made before any interest is paid on other liabilities. However, something more than that is required to put the company on a sound financial footing.

We suggest for the consideration of the company: (1) That either the principal amount of bonds be reduced or the rate of bond interest be reduced below 5 per cent, so that bond interest will not be so heavy a drain on earnings; (2) that there be provided a sinking fund equal to 1½ per cent per annum of the greatest principal amount of bonds outstanding at any one time, of which 1 per cent shall be fixed and absolute, and one-half of 1 per cent contingent on being earned, both the fixed and the contingent sinking-fund contributions to be payable before any payments, as to either principal or interest, are made on any obligations, other than evidenced by the said bonds, now due or which may hereafter become due to Southeastern Gas and Water Company, its successors, or assigns; (3) that the preferred stock be converted into common stock; (4) that consideration be given to the feasibility or desirability of converting into common stock the presently outstanding note and open-account indebtedness to Southeastern Gas and Water Company.

To give the company time to formulate a comprehensive plan of financial and accounting reorganization, including the obtaining of consents from bondholders and the drafting of amendments to the indenture of mortgage, we shall approve extension of the date of maturity of the bonds to February 1, 1943.

The matters and things involved at Securities Certificate No. 292 having been duly presented and heard, and full consideration having been given thereto, we find and determine that the extension of the date of maturity of the first mortgage bonds of Northern Cambria Water Company to February 1, 1943, subject to appropriate conditions, is necessary or proper for the present and probable future capital needs of said company; and we further find and determine that the extension of the date of maturity of said bonds beyond February 1, 1943, is not necessary or proper for the present and probable future capital needs of said company; therefore,

Now, to wit, May 11, 1942, it is *ordered:*

1. That Securities Certificate No. 292, as amended, filed by Northern Cambria Water Company with respect to the extension of maturity of its first mortgage bonds from August 1, 1941, to August 1, 1951, be and is hereby registered in so far as it pertains to the extension of the date of maturity of said bonds to February 1, 1943, and be and is hereby rejected in so far as it pertains to the extension of the date of maturity of said bonds beyond February 1, 1943.

2. That from August 1, 1941, to

February 1, 1943, the rate of interest on said bonds shall not exceed 5 per cent per annum.

3. That, effective January 1, 1942, there shall be provided a sinking fund equal to 1½ per cent per annum of $89,000, of which 1 per cent shall be fixed and absolute, and one-half of 1 per cent contingent on being earned; both the fixed and the contingent sinking-fund contributions to be payable before any payments, either as to principal or interest, are made on any obligations, other than evidenced by said bonds, now due or which may hereafter become due to Southeastern Gas and Water Company, its successors or assigns.

WISCONSIN PUBLIC SERVICE COMMISSION

Herbert A. Jacobs et al.

v.

Wisconsin Telephone Company

[2-U-1784.]

Sam Miller et al.

v.

Wisconsin Telephone Company

[2-U-1798.]

Rates, § 541 — Telephone — Base rate area — Enlargement.

1. Applications by residents of subdivisions or areas not included in an exchange base rate area for an order requiring inclusion should be denied where an application by the company for an enlargement of the base rate area to cover such subdivisions and others and to adjust rates on the enlarged basis is denied, p. 126.

Rates, § 541 — Telephones — Exchange base rate area — Alteration — War defense areas.

2. Boundaries of any base rate area for a telephone exchange should not be determined upon a temporary basis, and in particular it is inadvisable to attempt a revision of a base rate area or to solve the problem by isolated alterations in a city which is a defense area in which many activities connected with the national war effort are springing up on the outskirts of the city, p. 127.

[May 5, 1942.]

PETITIONS *for inclusion of certain areas or subdivisions in base rate area of telephone company; denied.*

By the COMMISSION: The above-entitled proceeding 2–U–1784 was instituted by the filing on November 18, 1941, of the petition of Herbert A. Jacobs and forty other residents in the subdivisions or areas known as Sunset Village and Westmoreland.

The proceeding 2–U–1798 was instituted by the filing on January 5, 1942, of the petition of Sam Miller and forty-two other residents of the area or subdivisions described as University Park and Mapleside.

Such petitions requested, in effect, that the areas or subdivisions therein described be included within the so-called base rate area of the Madison exchange of the Wisconsin Telephone Company so as thereby to make the base rates of said exchange applicable to the service rendered to petitioners and other subscribers in such areas or subdivisions.

By order of the Commission made under date of January 26, 1942, the two proceedings above entitled were consolidated.

Hearings were held at Madison in such consolidated proceedings on February 5, 1942, and on February 16, 1942, before examiner H. T. Ferguson.

Applicants contend that the exclusion of the Sunset Village and Westmoreland areas from the base rate area of the Madison exchange constitutes an unjust discrimination. That such exclusion constitutes discrimination is, in effect, conceded by the respondent, Wisconsin Telephone Company.

The respondent contends, however, that such discrimination cannot be eliminated by the simple process of including such areas within the base rate area without thereby unjustly and unlawfully reducing the revenue which it derives from the exchange as a whole; and that the proposed inclusion of the areas cannot lawfully be prescribed unless, at the same time, rates are prescribed for the whole exchange which will offset the loss that would result from such inclusion.

Respondent also urges that it has filed an application for a change in the base rate area of the Madison exchange to include not only the areas involved in this proceeding, but other areas adjacent to Madison which it considers as proper to be included in such base rate area, and has asked for rates which it considers would be proper to be charged within the area as thus comprised.

Such application is the subject matter of a separate proceeding, 2–U–1811, 43 PUR(NS) 193, in which we have entered an order disapproving the rates and the enlargement of the base rate area of the Madison exchange, as so proposed, for reasons stated in the opinion accompanying such order. That opinion is referred to here without restatement.

[1] In view of the decision and order in 2–U–1811, *supra,* it would be unfair and improper to require the enlargement of the Madison exchange base rate area as proposed in the applications herein. The injustice in dealing with a particular enlargement of the Madison base rate area in the face of a denial of the request for a determination of such base rate area as

a whole is apparent. Moreover, we think that while the granting of such petitions might remove a discrimination with respect to the petitioners herein, it would tend to aggravate any discrimination that may presently exist with respect to other subscribers who may be as much entitled to be included within such base rate area as the subscribers in the particular areas involved in these proceedings.

Accordingly, it is our conclusion that we should not deal piecemeal with the enlargment of the base rate area of the Madison exchange. These proceedings will therefore be dismissed without prejudice to the right of the applicants to file a new position for a determination of the limits or boundaries of such base rate area.

[2] In this connection it is appropriate to state our view that the boundaries of any base rate area for a telephone exchange should not be determined upon a temporary basis; and that, in the present emergency, and particularly for an exchange located in a defense area, it is extremely difficult at this time to make such a determination which will be fair and equitable for a reasonable period in the future.

Madsion is now a defense area. Many activities connected with the national war effort are springing up on the outskirts of the city. New communities are being developed which involve new questions of telephone service. In these circumstances we believe it inadvisable at this time to attempt a revision of the Madison base rate area as a whole; and manifestly it would be even more inadvisable to attempt to solve the problem by isolated alterations.

ORDER

It is therefore *ordered:* That the above-entitled proceedings be and are hereby dismissed, without prejudice to any applicant or petitioner herein to file an application for a determination by the Commission of the proper boundaries for the base rate area of the Madison exchange of the Wisconsin Telephone Company.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Borough of West Chester

v.

Philadelphia Electric Company

(Complaint Docket No. 13697.)

Rates, § 229 — Franchise agreement — Free service.

A public utility has the right to require payment of duly filed and effective tariff rates notwithstanding a franchise agreement to provide free service in return for the right to place utility facilities under municipal streets.

(BEAMISH, Commissioner, dissents.)

[May 25, 1942.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

COMPLAINT against electric company requiring payment for steam-heating service where franchise provides for free service; dismissed.

By the COMMISSION: This matter is before us upon complaint of the borough of West Chester, Pennsylvania, alleging that Philadelphia Electric Company requires payment of bills for steam-heating service to West Chester Fire Company, Goodwill Fire Company, and Fame Fire Company, all in the borough of West Chester. The bills are admittedly rendered in accordance with the applicable tariffs of Philadelphia Electric Company duly filed and effective, but the borough of West Chester resists payment by reason of a franchise agreement between the borough and Edison Electric Illuminating Company of West Chester, Pennsylvania, predecessor of Philadelphia Electric Company, providing for free steam-heating service to the fire houses in return for the right to place a system of pipes under the borough streets.

The only issue involved is the right of a public utility to require payment of duly filed and effective tariff rates in the face of a contract arrangement providing for other rates or free service. This issue has been many times raised and decided in Pennsylvania. The leading case deciding that such a contract must give way is Leiper v. Baltimore & P. R. Co. (1918) 262 Pa 328, PUR1919C 397, 403, 105 Atl 551, wherein it was held at page 335 of the opinion that: "Where parties enter into a contract which relates to a matter which may subsequently be the subject of revision by the state in the exercise of its police power, their contracts, whether definite or indefinite in point of time, must be held subject to the right of the state to act in regard thereto. They cannot allege that the contracts, so far as the state is concerned, are inviolable." In the Leiper Case, certain fixed rates were agreed upon in consideration of a right of way, but the court held that such rates must yield to the rates which subsequently become effective under The Public Service Company Law. We may mention, among the several authorities following the Leiper Case, Henshaw v. Fayette County Gas Co. (1932) 105 Pa Super Ct 564, PUR1933B 141, 143, 161 Atl 896. In the Henshaw Case the court held at page 567: "As Judge Keller points out in Wayne Sewerage Co. v. Fronefield (1921) 76 Pa Super Ct 491, 499: 'Free use of public service by certain favored persons cannot be permitted under any form, whether deed, contract, ordinance, agreement, or otherwise: Vernon Twp. v. Public Service Commission (1920) 75 Pa Super Ct 54; Ben Avon v. Ohio Valley Water Co. (1921) 75 Pa Super Ct 290,' as such action is discriminatory."

Bound by the law as stated in the court opinions, we have no alternative but to dismiss the complaint.

Commissioner Beamish voted in the negative.

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Equipment Notes

Taylor Aneroid Manometer

The absence of mercury or other liquid from a new Aneriod Manometer developed by the Taylor Instrument Companies, Rochester, N. Y., removes the possibility of product contamination and the hazard of mercury being blown due to line surges or carelessness. Further advantages are that sealing liquids are rarely required and vital mercury is released for the war effort.

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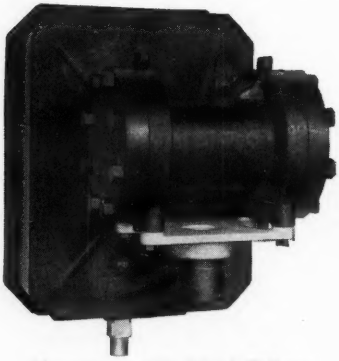

Manometer with Metal Bellows

system and is designed so as to eliminate friction and lubrication. This new assembly also does away with the lost time involved in maintenance. Friction, lost motion and wear are further reduced by the absence of internal pivots and springs.

Metal bellows respond to the pressure variations and insure faster response under ordinary circumstances with immediate reaction to sudden changes in flow. The sturdy bellows are built to withstand high over-range without damage.

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Street Light Shield

Dimout protection for street lights located in coastal areas is provided by a new cone-shaped shield which has just been developed in General Electric's illuminating laboratory. It is carefully designed to eliminate both direct and sky glow which silhouettes cargo ships off shore and makes them targets for enemy submarines.

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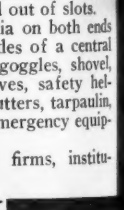

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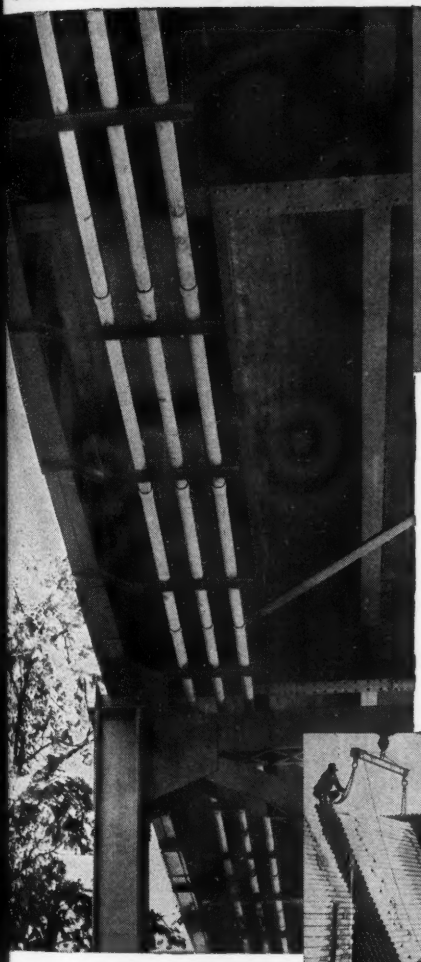

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Equipment Notes (Cont'd)

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Limiter for Protecting Power Systems

Development for war factory power systems of a new noise-proof limiter that snuffs out 54,000 kilowatts of electricity has been announced by the Westinghouse Electric and Manufacturing Company, East Pittsburgh, Pa. The limiter has made possible a new sabotage-proof method of distributing high-voltage power in factories.

The limiter protects double-circuit cables against serious damage from a short circuit, which might be caused by worn out insulation, by water seeping into a cable, or by a wrench falling across bare conductors. Such a short circuit melts a pencil-sized copper bar inside the limiter, disconnecting the circuit. Otherwise, the short circuit might damage the cable more seriously and spread to adjoining cables. Once blown, the inexpensive limiter can be replaced by a new one.

Catalogs and Bulletins

Automatic Control of Synthetic Rubber Process

The Bristol Company of Waterbury, Conn., has published a 12-page bulletin (No. 103) giving information concerning the application of automatic control instruments on synthetic rubber processes.

The bulletin is liberally illustrated with typical installations and sketches showing how the instruments are applied.

Beryllium Copper Fuse Clips

A folder describing the new Littelfuse beryllium copper fuse clips and screw terminals has been issued by Littelfuse Incorporated, Chicago.

This folder is a compendium for technical as well as general information, compiled from records by designers and engineers of Littelfuse Incorporated.

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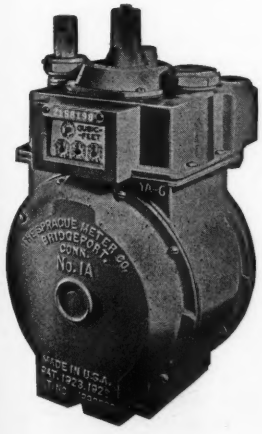

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Write for bulletin.

THE SPRAGUE METER CO.
Bridgeport, Conn.

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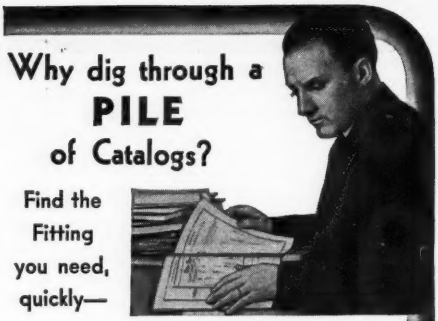


Why dig through a PILE of Catalogs?

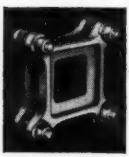
Find the Fitting you need, quickly—

in the COMPLETE line

If you have a Penn-Union Catalog, you can instantly find practically every good type of conductor fitting. These few can only suggest the variety:

Universal Clamps to take a large range of conductor sizes; with 1, 2, 3, 4 or more bolts.

L-M Elbows, with compression units giving a dependable grip on both conductors. Also Straight Connectors and Tees with same contact units.

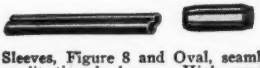


Bus Bar Clamps for installation without drilling bus. Single and multiple. Also bus supports—various types.

Clamp Type Straight Connectors and Reducers, Elbows, Tees, Terminals, Stud Connectors, etc.

Jack-Knife connectors for simple and easy disconnection of motor leads, etc. Spring action—self locking.

Vi-Tite Terminals for quick installation and easy taping. Also sleeve type terminals, screw type, shrink fit, etc. etc.



Splicing Sleeves, Figure 8 and Oval, seamless tubing—also split tinned sleeves. High conductivity copper; close dimensions.

Preferred by the largest utilities and electrical manufacturers—because *they have found that "Penn-Union" on a fitting is their best guarantee of Dependability.* Write for Catalog.

PENN-UNION ELECTRIC CORPORATION
ERIE, PA. ***Sold by Leading Jobbers***

PENN-UNION
CONDUCTOR FITTINGS

DICKE TOOL CO., Inc.
DOWNERS GROVE, ILL.
Manufacturers of
Pole Line Construction Tools
They're Built for Hard Work

Catalogs and Bulletins (Cont'd)

Plastic Portable Register

The Standard Register Company, Dayton, Ohio, has issued an illustrated bulletin describing a new plastic register, model PKP-12, which embodies many long-needed improvements in the autographic registers and in record systems generally, according to the manufacturer.

Precision Lathes

Catalog No. 16, describing South Bend 16-inch precision lathes, has just been issued by the South Bend Lathe Works, South Bend, Indiana.

This 8-page, file-size catalog completely illustrates and describes toolroom, quick change gear lathes. Attachments, accessories and tools for use with these lathes are also listed.

Manufacturers' Notes

F. D. Crowther in Signal Corps

F. D. Crowther, lighting division sales manager of the General Electric Company in Schenectady, New York, has joined the United States Army as a captain in the Signal Corps.

Herrington Elected to Military Engineering Society

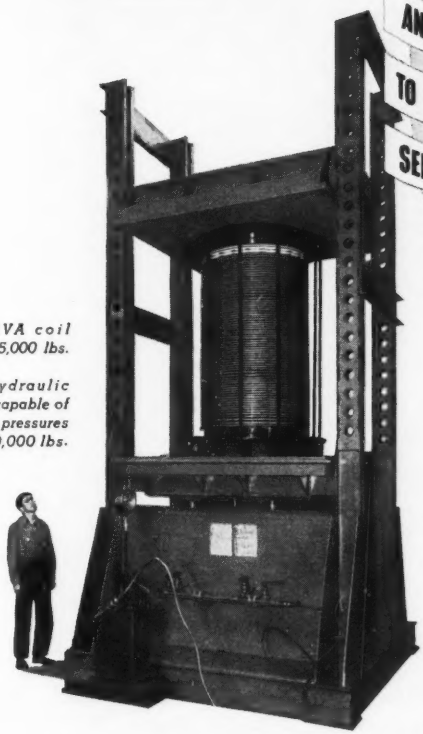
A. W. Herrington, president of the Society of Automotive Engineers, technical advisor to Col. Louis A. Johnson on the recent American Economic Mission to India, and president of The Marmon-Herrington Company of Indianapolis, Indiana, has been elected to serve for three years as a director of the American Society of Military Engineers.

National Projected Wood Sash Units

An important projected wood sash development that appears to fill a need in the present priority emergency, particularly for industrial installations, has been announced by National Door Manufacturers Association of Chicago. Manual A (A1A File 19E-11) covering the development has been issued by the Association and will be mailed free on request.

Timken Flies Bond Flag

The Timken-Detroit Axle Company now flies the Treasury's Minute Man Flag, for 96 per cent participation in the War Bond Payroll Deduction Plan.



5000 KVA coil under 125,000 lbs. pressure. This Hydraulic press is capable of exerting pressures up to 600,000 lbs.

ANOTHER *Pennsylvania* INNOVATION TO INSURE UNFAILING TRANSFORMER SERVICE FOR WAR INDUSTRIES . . .

The fundamental principles of building transformers to withstand short circuits are as follows:

1. The coils and all insulation must be dried sufficiently to make sure that no shrinkage will take place when the transformer is in operation or is under a short circuit.
2. The dry coils must be pre-compressed to such an extent that no further compression can take place under the most severe short circuit. This definitely precludes any possibility of the coil stack moving or distorting under short circuit.
3. After drying and pre-compressing, the coils must be treated in such a manner that they are self-supporting and will maintain their pre-compressed and pre-shrunk shape when mounted on the core.
4. The final step is to provide sufficiently strong supports at the top and bottom of the group of coils to keep the coils in their pre-compressed shape.

Every Pennsylvania Transformer of the Helical and Pancake type is constructed on these principles.

A Sure Way of Building Transformers

THE ability of the coil to maintain its shape under the prescribed pressure is your guarantee that the transformer will withstand short circuits.

Pennsylvania TRANSFORMER COMPANY 808 RIDGE AVENUE • N. S., PITTSBURGH, PA.

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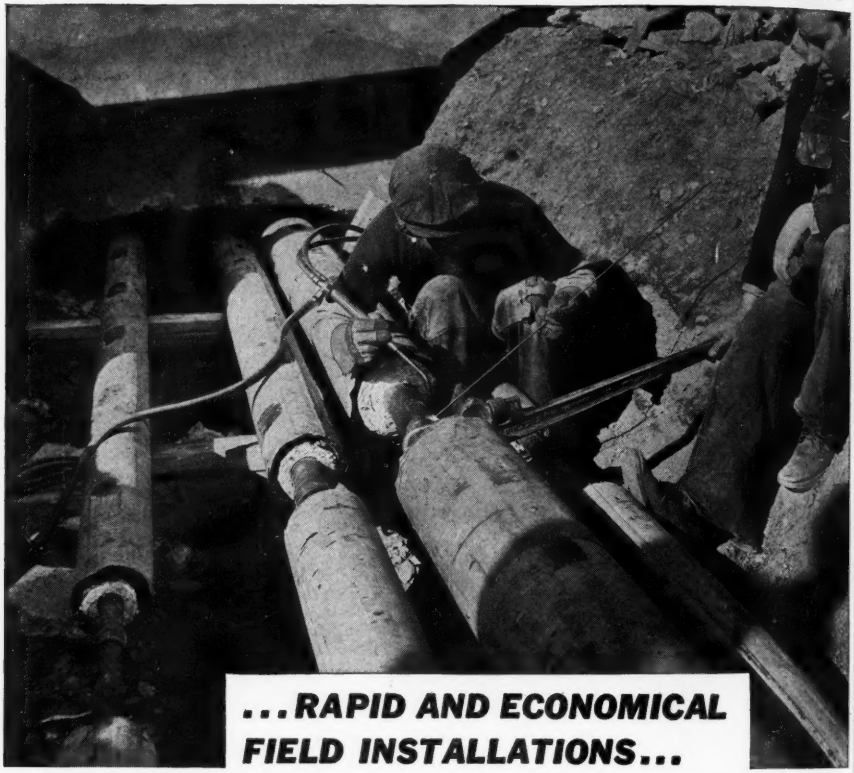
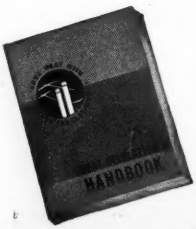
FOR UNDERGROUND PIPE LINES



...RAPID AND ECONOMICAL FIELD INSTALLATIONS...

with EHRET'S DURANT INSULATED PIPE



Laying underground insulated pipe lines is both rapid and economical when you use the Durant Insulated Piping system. This pre-insulated and pre-sealed system comes to you in completely finished units, ready for installation. No tile or concrete tunnels are required and there is nothing extra to buy. The pipe supports are self-contained and the piping units can be laid with a minimum of trenching and field work. The asphalt protection is permanently water-proof and the 85% Magnesia insulation will maintain its efficiency throughout the years.

Write us today for your copy of the new Ehret 176-page Insulation Handbook, #K200, which describes the D. I. P. system as well as many other Ehret products. It's free.

EHRET MAGNESIA MANUFACTURING CO.
VALLEY FORGE, PENNA.

...THERE IS AN *EHRET* DISTRIBUTOR OR CONTRACTOR IN EVERY INDUSTRIAL AREA

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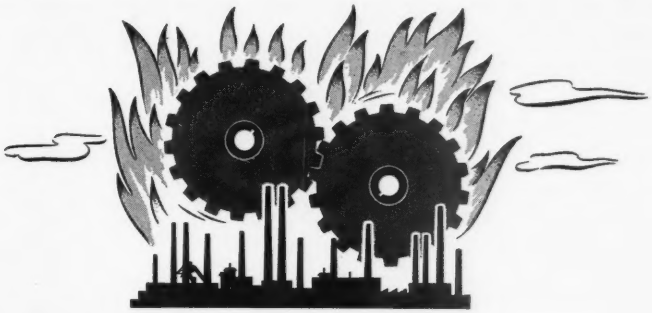


MAKING IT HOT FOR THE AXIS

ON AMERICA'S MIGHTY PRODUCTION FRONT

WANT to know what "Made in America" means in Tokio, Berlin and Rome, these days? Ask Doolittle! Ask the flying Tigers! Ask our fighting men and allies everywhere! With each passing day, more American-made planes . . . guns . . . tanks take their toll on every battlefront—and plenty more are on the way! In a war of machines, America's production front smashes ahead at top speed—is rapidly strengthening American armed might for the final all-out assault on the Axis.

Behind today's manufacturing achievement is the story of America's *power* production—for mine, mill, factory, assembly line. In power plants of every type, as well as in fighting and merchant ships, over 50,000 Todd units are contributing their full share of this basic horsepower —hanging up new records everywhere in the efficient combustion of liquid and gaseous fuels.

Todd technical service staffs, stationed in key cities . . . with parts and replacements instantly available . . . are helping to maintain uninterrupted power for America's mighty production line.

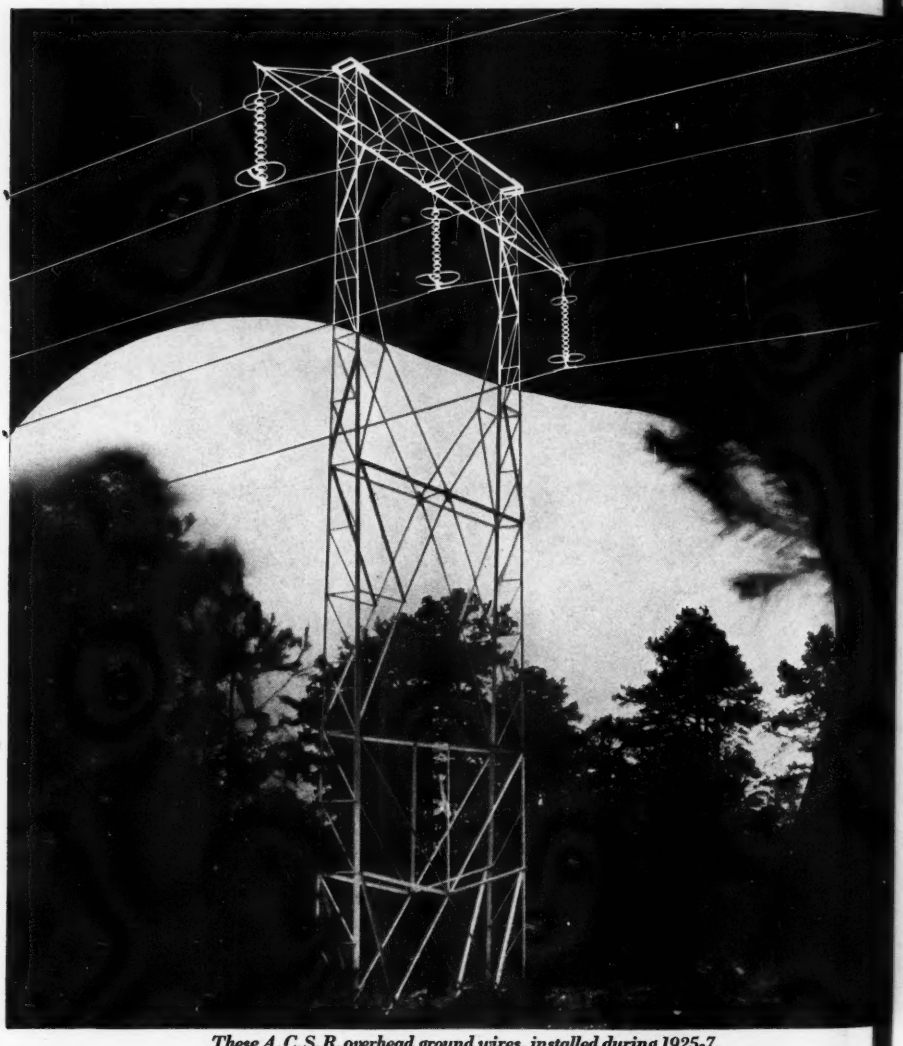
TODD COMBUSTION EQUIPMENT, INC.

(Division of Todd Shipyards Corporation)

601 West 26th Street, New York City

TODD NEW YORK U.S.A.

YORK MOBILE NEW ORLEANS GALVESTON SEATTLE BUENOS AIRES LONDON



These A. C. S. R. overhead ground wires, installed during 1925-7, are being removed for use as power conductors on a new line.

ALCOA
ALUMINUM
A.C.S.R.
A·C·S·R

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IMAGINEERING
is getting power to vital war industries

A.C.S.R. overhead ground wires have protected parts of this line for seventeen years. But they're being taken down now—for more urgent service—to be used as power conductors on a new line.

New conductors could not be obtained, so Imagineering by this power company's engineers found a way of serving additional vital war industries.

Imagineering is taking care of the future, too. Spans, towers, insulators and fittings are all planned so that this new line will accommodate new and larger conductors, when they again become available. Alcoa engineers are assisting in all of this design work.

When you have the problem of getting more work out of old lines, or of keeping them on the job, Alcoa engineers are always here to advise you. Write ALUMINUM COMPANY OF AMERICA, 2134 Gulf Building, Pittsburgh, Pennsylvania.

Aluminum Cable Steel Reinforced

ON RURAL POWER LINES AND HI-LINES

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1510 Lincoln Bank Tower Fort Wayne, Indiana

DAVEY TREE TRIMMING SERVICE

1846 1923
JOHN DAVEY
Founder of Tree Surgery

Eliminate These Dangers

Trees along your lines may need checking over to discover hazardous dead branches, shattered trunks, dangerous overhanging limbs and other menacing situations. Protect your lines with Davey service.

Tree interference may aid the Axis

DAVEY TREE EXPERT CO. KENT, OHIO
DAVEY TREE SERVICE

INSIST ON
Parsons
Papers
FOR YOUR
Forms
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Superior Quality
MADE FROM COTTON FIBERS
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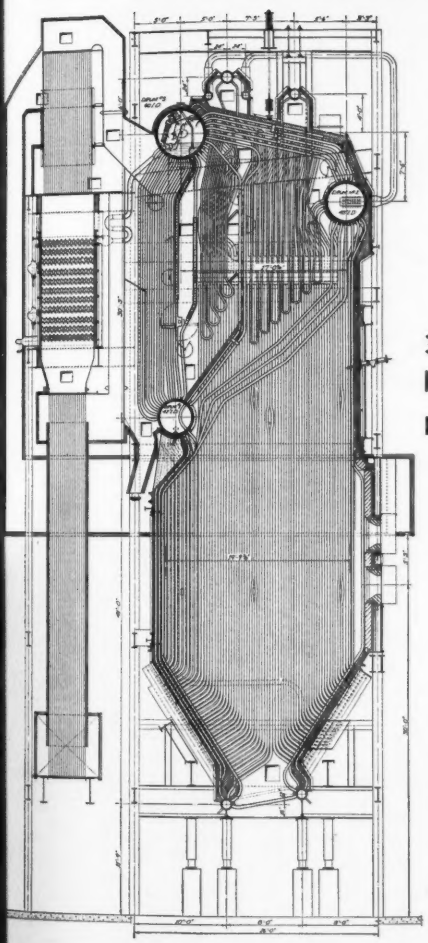
HOLYOKE · MASSACHUSETTS

RILEY STEAM GENERATING UNIT



Pennsylvania Edison Co.
Purchases High Efficiency
Unit for Williamsburg, Pa.

Burns & Roe, Inc., Cons. Eng.

300,000 pounds of steam per hour, 975 lbs. steam pressure, 900° F. steam temperature, 88.4% efficiency.

This Unit Consists of

Riley Boiler, Superheater, Steam Temperature Control, Economizer, Air Heater, Water Cooled Furnace and Steel Clad Insulated Setting. Fired by Riley Pulverizers and Burners.

RILEY STOKER CORPORATION

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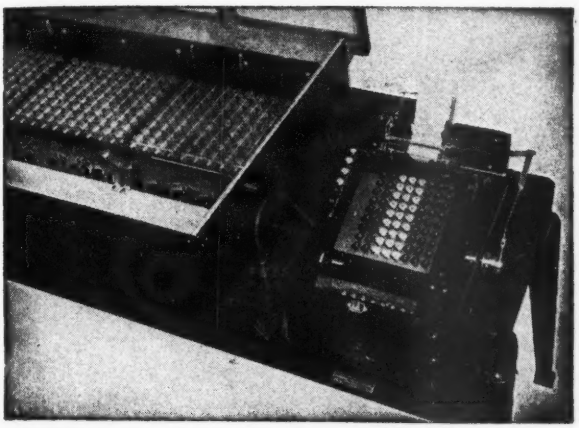
SAVE 50%

TIME AND MONEY WITH

THE ONE-STEP METHOD



OF BILL ANALYSIS

WHAT effect is the national defense program having on your bill distribution? Analysis of customer usage data will provide the answer to this important question. In addition to a knowledge of the existing situation, certain trends may be disclosed, a knowledge of which may be of considerable importance to you under circumstances where the picture is rapidly changing.

The *One Step Method of Bill Analysis* is ideally suited to meet the needs of this problem. It does away with the necessity for temporarily acquiring, training and supervising a large clerical force. Our experienced staff plus our specially designed Bill Frequency Analyzer machines can turn out the job in few days and at the cost of only a small fraction of a cent per item.

We will be glad to tell you more in detail about this accurate, rapid and economical method for obtaining a picture of your customer usage situation. Write for a copy of the booklet *"The One Step Method of Bill Analysis."*

Recording & Statistical Corporation

Utilities Division

102 Maiden Lane, New York, N. Y.

Boston Chicago Detroit Montreal Toronto

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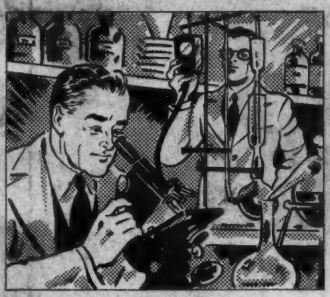
War Research

In war the advantage is on the side with the best weapons. The work of scientists in America's research laboratories, developing new materials and new equipment, means a lot to our fighting men.



1. It takes years to build up and equip a large, organized, and able staff for research. Fortunately, industry did this long ago.

2. Long before Pearl Harbor, laboratories like General Electric's were serving their country—solving technical problems of war.

3. History repeats! In the last war "wireless" was developed for military needs—to become, with peace, a giant broadcasting industry.

4. So it will be this time. Research will help to win the war, and its many wartime discoveries will help to build a better future.

General Electric believes that its first duty as a good citizen is to be a good soldier.

General Electric Company, Schenectady, N. Y.

959-14-211

GENERAL ELECTRIC

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